THE NORTH CAROLINA STATE BAR

JOURNAL

SUMMER
2010

IN THIS ISSUE

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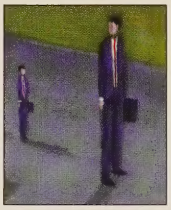

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BAR UPDATES

We Know It When We See It...

By Barbara B. Weyher

The Grievance Committee of the North Carolina State Bar disciplines lawyers for breaches of the Rules of Professional Responsibility. Offensive conduct that violates no rule, but is merely unprofessional, cannot be the basis for discipline. At most, a letter of caution may be sent advising the attorney that his or her conduct, while not the basis for discipline, is unprofessional or not in accord with accepted professional practice.

When I first sat on the Grievance Committee, I was confused about the distinction between ethics and professionalism and often frustrated when an attorney's offensive behavior resulted in nothing more than a letter of caution. I was reminded by more senior committee members that the Grievance Committee was not the "manners police." Upon reflection, I realized that it would be difficult to discipline lawyers for violating something that has no fixed definition or rules.

We have all seen numerous attempts to define the term "professionalism." Many people equate the term with civility, but professionalism is really a broader concept encompassing higher values such as integrity, responsibility, diligence, and respect. While *ethical* behavior means abiding by established rules of *professional* responsibility, professional conduct is something above and beyond, which is fluid and sometimes difficult to delineate.

When trying to define a similarly indistinct but far less noble concept, Justice Potter Stewart wrote, "I know it when I see it." I suggest that may also be a good way to capture the essence of professional behavior. It is an amalgamation of all the positive acts we see in our everyday practice which make us proud to be lawyers: the young lawyer who helps a technologically challenged opposing counsel get his PowerPoint running; the attorney who takes a voluntary dismissal after a judge denies a continuance needed by opposing counsel for a family matter; an experienced attorney's offer of assistance to a newly licensed lawyer who is hanging out a shingle; the lawyer who says no to a client who insists on Rambo tactics; and (from personal experience) the veteran attorney who tells his inexperienced opposing counsel that she did a wonderful job at her first deposition (it wasn't true, but I appreciated it nonetheless). I am sure that each one of us can recall hundreds of similar, unheralded acts which exemplify the concept of professionalism. We just know it when we see it.

Likewise, we know unprofessional conduct when we see it: personal attacks on opposing counsel or parties; letters "confirming" agreements different from the agreements actually reached; lawyers taking on representations they don't have the competency to handle; depositions noticed without prior consultation with opposing counsel; rolling eyes and other antics during opposing counsel's argument; and clients' telephone calls unreturned.

How do you stop unprofessional behavior when the boundaries are so ill-defined? The Grievance Committee can discipline lawyers for clear rule violations. Enforcing good character, however, is a far greater challenge that confronts all of us on an individual basis. Obviously, education and mentoring are the best preventative measures, but are there appropriate steps we each can take when faced with bad behavior during the course of our daily practice? I don't think ignoring it is the right answer. Many of us are often reluctant to confront unprofessional conduct head-on. I believe we need to take a more proactive stance. I don't mean that we should be confrontational. What I am suggesting is that we do a better job of affirmatively addressing and dealing with the offensive conduct when it occurs. I offer the following suggestions on the subject, none of which I can claim as my own:

- Take the lawyer to lunch and discuss the issue. I have heard Raleigh lawyer Ed Gaskins, a Joseph Branch Professionalism Award winner, advocate this many times.
- Make a record. Video depositions seem to deter bad behavior to some degree (although not always—the YouTube video "Texas Style Deposition" being a case in point). When a deposition is not being videoed, it is important to establish a record of inappropriate conduct or tactics by requesting, without discourtesy, that opposing counsel refrain from whatever the offensive behavior is, for example, asking

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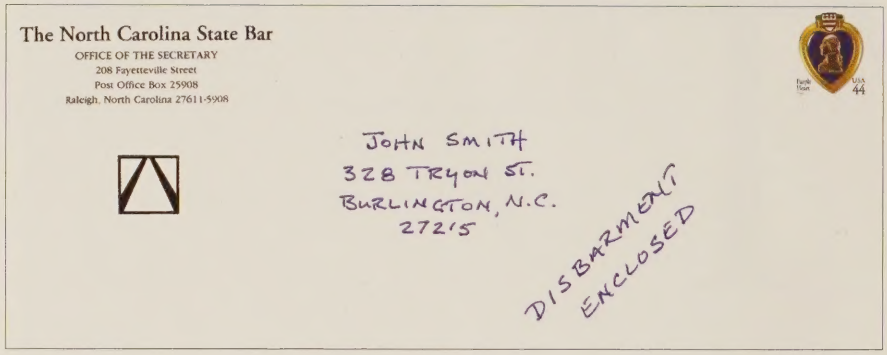
Rebranding the Bar

By L. Thomas Lunsford II

I have a confession to make. Several years ago I used official State Bar property for personal purposes. I know I shouldn't have done it, and I have since apologized to all concerned, but at the time I was relatively new in the position of executive director, somewhat immature, and rather full of myself. Here's what happened. I had a couple of tickets to an important UNC basketball game that I couldn't use. I decided that I would give them to a dear friend and fellow lawyer practicing in my hometown, Burlington. Since the game was to be held on Thursday, and it was already late on Tuesday, I knew I had to hurry to get the tickets in the afternoon mail. Not having access to any personal stationery, I searched in vain for a plain white envelope. Finding none, and being unwilling to allow the tickets to remain unused or to fall into the hands of a Duke fan, I helped myself to one of the preprinted envelopes with which you are all so familiar. And, as if that weren't shameful enough, I then, without malice aforethought or a functioning moral compass, succumbed to a further temptation. In crude hand-lettering, I wrote diagonally across the envelope, "DISBARMENT ENCLOSED." I subsequently deposited the article in the outgoing mail, chuckled internally as I reflected upon the inspired quality of the jest, and went back to work.



I thought no more about this correspondence until I encountered my friend a week or two later and inquired as to how he had enjoyed being at the game. He looked puzzled and advised me that he had not been in attendance. When I asked why he hadn't used the tickets I had sent him, he declared that he had never received them. We both were mystified. After we parted he returned to his office and asked his assistant if she knew anything about the matter. She hesitated, blushed, and then reached into a locked drawer where she had secreted the envelope. She said that she had hidden the letter from him because she was afraid that the awful contents might induce him to harm himself.

I often recite this sad tale at district bar meetings when called upon to discuss the State Bar's disciplinary program. The moral of the story in that context is that you should always hasten to open official mail from the Bar. The story usually gets a few laughs and, I think, makes the point quite well. It is offered here, however, for another reason. It's meant to illustrate just how powerful a symbol our logo can be.

Of course, we can't know for sure exactly what it was about the envelope that inspired the fearful response described above. Maybe the word "disbarment," however childishly and improbably inscribed, was enough to terrify a grown woman. Maybe the impressively printed reference to the "North Carolina State Bar" in the return address was alone sufficient to evoke a sense of doom. I tend to believe, though, that it was our logo that most impressed her. I think that for her, and a lot of other people, the logo has, rather unfortunately, been invested with dire meaning. It has, after all, graphically represented for over 30 years an agency that is best known for its unrelenting enforcement of the highest professional standards. Whether it's affixed to a publication, a business letter, or a commemorative ash tray, the logo is likely to be perceived by many as a policeman's badge rather than a beneficent brand. It bespeaks Javert, not Valjean. And, of course, even those who are reasonably well-informed regarding the Bar, its diverse programs and its good intentions are somewhat baffled by the logo. I mean, what does it really mean?

Since our logo has been around for so long, you would think that it would be well understood. The fact is, most people have no idea what is depicted or what the designer intended. I recently took a private survey of a group of 30 above average people, all of whom happen to be employees of the State Bar, and asked them what they thought the logo was supposed to be. Although they all recognized the logo as our logo, there was considerable disagreement as to what was depicted. Most people told me that they thought the image was a "road" of some sort. Among the variations on this theme were "the road to justice" and the all too Alaskan "road to nowhere." Another group responded to the triangular nature of the design, seeing a "pyramid" or the rather more inspiring "pyramid of justice." In somewhat the same vein, someone saw a "prism" and someone else saw the Greek letter "delta." Others discerned compound triangles that alternatively looked like a

"telephone from the 1960s" and, my personal favorite, "the Stanley Cup."

A small minority actually came up with the right answer: the scales of justice. Interestingly, people were much more likely to guess correctly when the image was black on white rather than white on black. I don't know exactly what that means, but I'm keeping it in mind in case I decide to enter the competition to design the State Bar's next logo. Yes, that's right. We're going to have a contest this fall to see if someone can come up with a better design. Our Issues Committee has decided to admit the possibility that a better logo may be out there in your individual or collective imaginations, and is hoping that you can be persuaded to conjure it for and donate it to the State Bar in exchange for graphic immortality. I'm telling you this now, even though the official announcement won't be made until September, so that you can begin to summon your muses and think about what might look good on computer-generated stationery or whatever people are making in ceramics classes now that ash trays are passé.

In gearing up to make your submissions, please keep in mind that this will be an exercise in rebranding. In the words of the marketing professionals: we want to "leverage existing brand equity and goodwill while ridding the brand of negative connotations." Apparently our current logo, which to most people is nothing more than a memorable cipher, is for some, like the lady in Burlington, an ominous icon, associated more with our vigorous and effective disciplinary program than with our many other successful efforts to assist lawyers and protect the public. Ideally, our new logo will be less "aggressive" than the scales of justice. Among other things, it should communicate that we expect to answer about 6,000 ethics questions this year from lawyers who want to do the right thing. It should tell the world that in 2010 we will respond helpfully and respectfully to over 20,000 phone calls from disgruntled citizens. It should remind people that through the Client Security Fund we will, as a self-governing profession, again accept collective responsibility for the very few lawyers who cannot be trusted. It should underscore that our Lawyer Assistance Program will save dozens of careers and lives imperiled by addiction and mental illness this year—just like it did last year, just like it will next year.

Obviously, we need a kinder, gentler logo that can't be mistaken for a highway or sports trophy. And, while we're on the subject of symbols, I should tell you that we could also use a better seal. The subject came up recently in regard to our proposed headquarters building. It was suggested that the State Bar ought to have an appropriately impressive seal, which might somehow be used to decorate or identify the new structure. This prompted an inspection of our current seal, the appearance of which evidences a breathtaking aversion to good design. Its form is prescribed in Section .1300 of Subchapter A of Chapter 1 of the Rules and Regulations of the North Carolina State Bar. According to that rule, the seal shall be "round in shape and having the words and figures, 'The North Carolina State Bar July 1, 1933,' with the word 'Seal' in the center." That's it. No Latin words, no eagles, no partially naked women with scrolls or scales, and no triangles. Just the term, "Seal," floating in the circular void. This emblem, however well and unambiguously it might have served its primary purpose over the years, is obviously unfit to be chiseled on the façade of our new building—and heaven forbid its mosaic rendition on the lobby floor. It must be conceived anew, with or without reference to the Stanley Cup, and made fit for architectural inscription. Accordingly, I'm taking the liberty of inviting you all to create a new seal while you're reimagining our logo. In return for your participation in this great endeavor, I am pledging never again to misuse State Bar property. I also intend to give the winner a couple of basketball tickets, but he or she will have to pick them up here at the office. ■

L. Thomas Lunsford II is the executive director of the North Carolina State Bar.

President's Message (cont.)

that the attorney not raise his or her voice to the witness. If the lawyer persists, there is always the option of suspending the deposition for a court hearing. This is certainly not the desirable course, but sometimes it may be the only alternative left.

■ Do not stand by passively when you witness discourtesy by an attorney to others, whether it is to a witness, party, courtroom clerk, or another lawyer. Speak up. Your voice will likely give confidence to others to speak up as well.

■ Contact the Professionalism Support Initiative ("PSI") program of the Chief Justice's Commission on Professionalism, through its Executive Director, Mel Wright. The PSI, through volunteers, reaches out to both lawyers and judges about whom it has received repeated complaints of unprofessional conduct. The complaints might be referred from the State Bar, the Judicial Standards Commission, local bar associations, or individual lawyers. PSI volunteers use confidential, peer influence to try to resolve professionalism issues. The type of attorney conduct that is appropriate for referral to the PSI includes disrespect shown to attorneys or others involved in the judicial process; abusive discovery practices; incivility, bias or other conduct unbecoming a lawyer; consistent lack of preparation; consistent failure to communicate with clients or other attorneys; deficient practice skills; and a pattern of failing to keep appointments and court dates.

■ Do not allow poorly behaved lawyers to draw you into the muck. Resist the temptation to treat your adversary with the same type of discourtesy he or she has shown you. I recognize from my own experience that this is often easier said than done; however, truthfully, I have always felt more anxiety and disappointment in myself on those occasions when I have returned incivility with incivility.

■ Finally (and this suggestion I have taken from one of my husband Dan's professionalism seminars), if you are constantly having trouble with other lawyers, look in the mirror. You may be part of the problem.

Although our profession is often the target of unflattering comparisons to sharks, snakes, and pit bulls, the truth of the matter is that the vast majority of our bar members treat others with respect and courtesy, work diligently for their clients, give back to their communities, and epitomize the principles of professionalism. No matter how hard "professionalism" may be to define, it surrounds us every day. And we know it when we see it. Hopefully, one day we will see it everywhere. ■

Barbara B. (Bonnie) Weyher is one of the founding partners of Yates, McLamb & Weyher, LLP, in Raleigh.

Addressing the Advocacy Gap—

Medicaid Recipients Filing for Medicaid Benefits

By Ann Shy

First the good news...

There are several particularly good things about Medicaid in North Carolina. For one, we have traditionally had some of the highest reimbursement rates in the country for healthcare providers serving Medicaid recipients.[1] That translates into more providers and better access to services for recipients. Another highlight is that the state has implemented a mediation program[2] whereby roughly 80% of all claims brought for Medicaid benefits by recipients are resolved through mediation, eliminating the need for an administrative hearing before an administrative law judge.[3] Approximately ten percent of claims are dismissed, either because of post-mediation settlement or because the party dropped the case (for reasons not examined here). For those recipients who proceed to a hearing, due process procedures were improved in 2009 which greatly increase efficiency for all parties.[4] Protracted litigation is not the model here. Finally, because our state has a large number of Medicaid recipients, many are well-served by these advantages.[5] These benefits aren't just nice, they're significant.

The not-so-good news...

What happens to Medicaid recipients whose problems aren't resolved in mediation? Fortunately, the process is efficient thanks to the recent legislation that condenses the timelines.[6] Resolving problems quickly is beneficial for all. The petitioner's time is no longer tied up in the dispute, and Medicaid, which must continue paying for disputed services throughout the hearing process, can stop paying an invalid claim if that's the case.[7] An expedited process reduces expenses from all sides. However, recipients rarely have legal representation at the hearing, so the *pro se* litigant faces off with the Attorney General's Office. To further complicate matters for the *pro se* Medicaid recipient, the administrative law judge's decisions are reviewed by the Department of Health and Human Services (DHHS), home to the Medicaid Agency. This is analogous to courtroom defendants having the power to overturn judges who rule against them. Technically, the Medicaid Agency can only reject the administrative law judge's ruling if the findings of fact are clearly contrary to the evidence presented in the hearing. This may seem like a limitation on the Medicaid Agency's power to overturn decisions; however, 81% of all decisions that favor the recipient have been overturned pursuant to Medicaid's power to render the final agency decision, and no decisions favoring Medicaid have been overturned. This suggests that either administrative law judges are prone to error in their decisions for recipients while correct at all times in their decisions for Medicaid,[8] or that *pro se* litigants are rarely capable of navigating the hearing in a way that will survive final agency review. The former explanation is unlikely, thus highlighting the critical need for advocacy for recipients during the hearing. A more detailed record from the hearing could offer greater protection of recipients' cases during final agency review. This simple fact to the legal profession may be entirely lost upon others, including Medicaid recipients claiming benefits rights.

After the Medicaid Agency overturns the administrative law judge's decision, the recipient can appeal in superior court for *de novo* review, again underscoring the need for a thorough record from the administrative hearing. In practice, recipients rarely have the resources to appeal. For those that do, the process comes to a screeching halt due to extremely overcrowded dockets. Of note, Medicaid stops paying for the disputed benefit once it renders its final agency decision unless the superior court grants a stay. I was recently told that a Medicaid case filed for appeal in mid-July 2009, and fully briefed back in September, was not argued until early February 2010. The wait time between that final agency decision and the appeal in superior court (seven months) was longer than the five month lifespan of a Medicaid denial running the full gamut of mediation, hearing, agency review, and filing an appeal.

Children can become Medicaid ineligible by turning 18 or 19 years old. A stalled appeal could render a claim moot if the petitioner becomes ineligible for the benefit due to age while waiting for the appeal process to run its course.[9] Worse still, the long-term effects of untreated and under-treated physical and mental health problems can extend and exac-

erbate long into adulthood. Put bluntly, there is bigger bang for the buck in healthcare dollars spent on children, and worse outcomes for longer periods when services are denied to young patients in need. This result underscores how the burden is not only on the individual family, but also eventually escalates into a burden on the state as a whole.

The best news yet...

One solution has been identified that could foster improvement beyond what's already in place. A group of legal professionals from law schools, from the judiciary, and practitioners recently discussed how post-mediation claimants fall through the cracks. The group crafted a fresh approach to expand the already notable success of North Carolina's response to handling claims against Medicaid.

Here's how it could work...

North Carolina is home to seven law schools and 24 Legal Aid of NC offices. Rather than a single law school developing a Medicaid law clinic, the group envisioned a network model that coordinates existing resources. Each law school would work on an ongoing basis with a particular set of Legal Aid offices in which the school's externship coordinator would place its externs. For example, if all seven schools participated in the network, each school would develop a placement relationship with three or four Legal Aid offices. First, externs would undergo a one-week substantive training on Medicaid procedure and appeals, then take those Medicaid-specific skills to the Legal Aid office. Externs would be assigned clients at whatever stage in the continuum claimants are in (i.e., pre-mediation, negotiation, hearing, appeal). A network coordinator would oversee the system, working closely with schools, Legal Aid, and trainers to ensure that academic requirements are met, court schedules are kept, clients are reached, cases are handed off smoothly between students, and attorney-to-student practice ratios are satisfied.

Why bother?

1. ***Legal Advocacy for Medicaid Recipients:*** A clear need has been identified. Medicaid recipients are already medically and economically burdened. The additional burden of navigating alone through the legal process is frequently too great despite the best efforts of the current system to assist them.

2. ***Improved Due Process:*** Petitioners are further disadvantaged by a system whereby final agency decisions overturn the vast majority of administrative law judge decisions favoring recipients. Without adequate legal representation, this routine practice may continue, creating an unfortunate appearance of bias. Further, the hearing record is often insufficient for adequate *de novo* review in superior court for those few petitioners who pursue an appeal.

3. ***Clinical Opportunity for Law Students:*** Students would have the opportunity to handle actual cases with attorney guidance and supervision. A single case can span alternative dispute resolution, an administrative hearing, and superior court review. With teleconferencing, these future lawyers would get early exposure to bringing geographically distant parties together through technology. Students would be exposed to public interest practice, health law, discovery with the Attorney General's Office, advocacy before administrative law judges and potentially in superior court.

4. ***Economic Benefit for Medicaid Agency:*** A coordinated network that manages claims for Medicaid benefits would further decrease the financial burden on Medicaid to continue paying for disputed services throughout the mediation, hearing, and review process by enhanced efficiency of process. Additional cost savings could occur for Medicaid if a formal network of legal expertise could eliminate the burden on Medicaid to train recipients (over 1.5 million in NC) on the hearing process. The October 2009 DHHS legislative report describes Medicaid's intent to provide due process training for providers and recipients, and its inability as of 2009 to provide that training to recipients.[10]

5. ***Benefit to Attorney General's Office:*** The Attorney General's Office could streamline its pre-hearing communication directly to the extern rather than juggle communications with the parent, healthcare provider, and any other party acting in a supportive role in the child's case.

6. ***Benefit to the State:*** The number of North Carolinians on Medicaid is increasing. The economic downturn, lack of employment growth, and health insurance reform appear to suggest an increase in eligible applicants beyond the normal trajectory.[11] Setting up a network of expertise in existing Legal Aid offices to handle claims now while the numbers are still manageable can mitigate future dispute backlog.

This network model proposes a response that goes beyond fractional progress. By involving as many law schools and Legal Aid offices as are willing to participate, the burden does not fall on a single institution to build a clinic or secure a niche, and the educational opportunity is spread to each participating institution. According to 2009 statistics, as many as 300 hearing claims are filed each month. That represents substantial opportunity to get lawyers-in-training involved in pre-mediation preparation (in the interest of keeping the mediations straightforward, attorneys do not participate in the mediations). About 20% of claims are not resolved in mediation—that's about 60 cases a month where negotiations might be appropriate. Roughly 30 of those claims are set for hearing, and decisions that favor the recipient (about one third) would be overturned if the trend continues, leaving about ten cases a month to be briefed for superior court if appropriate. These numbers will grow as more families qualify for Medicaid.

It would be unreasonable to pursue benefits for everyone with a claim. The good news is that the goal discussed here is to secure benefits for those who rightly qualify but lack the legal resources to work their way through the system that lies beyond mediation. This is not a proposal to increase Medicaid spending. It is a proposal to accurately spend according to recipients' benefit rights.

Disputes around claims and benefits are often the result of miscommunication, misplaced paperwork, or inattention to detail between the parties. Mediation has proved to be the right remedy to address these problems. The result is increased assurance that services are being correctly delivered or correctly denied, as the case may be. Unfortunately, for those who pursue a claim against Medicaid, existing statistics suggest that even if they win at the hearing, the agency is very likely to overturn the decision. While the right to an appeal in superior court exists, going *pro se*, hiring an attorney, or securing *pro bono* help may be far-fetched for an already medically-burdened child living in poverty. A network approach that systematically places trained, supervised externs in the community on an ongoing basis to provide advocacy at each stage of every recipient's legal journey with Medicaid is certainly possible. ■

Ann Shy is an attorney and mediator at Dispute Redesign in Carrboro, NC. Prior to becoming a member of the NC Bar in 2009,

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Recent Developments in North Carolina Animal Law

By Calley Gerber and William Reppy Jr.

Animal law continues to be a controversial and changing area in North Carolina.

In 2009, an unprecedented number of bills addressing animal issues were filed in the General Assembly. The most significant recent[1] developments in the evolution of animal law in North Carolina arise out of amendments to core statutes by the General Assembly plus its enactment of a new law, and out of new or amended city and county ordinances. At least two packages of administrative rules impacting animals are worthy of note, along with a few judicial decisions.

Cruelty to Animals

The state's primary animal cruelty statute, G.S. 14-360, was amended in 2007 to make malicious killing of an animal by depriving it of sustenance a class A1 misdemeanor,[2] following affirmance in 2004 of a cruelty conviction based on evidence that dogs had been intentionally starved.[3] In 2005, cockfighting was upgraded from a class 2 misdemeanor to a class I felony.[4]

In 1893, the Supreme Court held that conducting a pigeon shoot violated the state's criminal animal cruelty statute,[5] but a century later, the statue having been substantially rewritten, a pigeon-shoot operator sought a declaratory judgment that the statute, as applied to the activities he wished to conduct, was unconstitutionally vague.[6] One of G.S.14-360's exemptions related to birds subject to hunting, but this did not extend to birds the Wildlife Resources Commission classified as not "wild birds," which by a rule of the commission included "the domestic pigeon (Columba livia)." The court of appeals agreed with the plaintiff that—because of use of the word "domestic"—the statute as applied resulted in a

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denial of due process for failing to advise whether it removed from the statutory exemption feral pigeons that the plaintiff might use in a pigeon shoot.[7] The commission responded by deleting from its rule the word "domestic."[8]

It is generally believed that pigeon shoots are now as illegal as they were in 1893.

Since 1969, legislation unique to North Carolina[9] has granted private citizens and organizations standing to enjoin the same kind of animal cruelty that can be prosecuted criminally.[10] These are often referred to as "19A suits." In 2007, the court of appeals rejected the contention that granting standing to a person who had suffered no injury was unconstitutional under of the state constitution's provision that there exists "but one form of action for the enforcement or protection of private rights...."[11]

In 2003 and 2006,[12] the General Assembly amended the citizen-standing act to:

- clarify that cities and counties can be plaintiffs;
- authorize the court to appoint the plaintiff as custodian for animals at issue, with authority to provide them veterinary care and place them in foster homes;
- authorize the court to tax as costs the defendant owes the plaintiff sums spent by the plaintiff caring for the animals at issue;
- empower the court to terminate the defendant's ownership of the animals and vest ownership in the plaintiff or other suitable successor owner; and
- permit the court to enjoin the defendant from acquiring new animals for a specified period of time.

In recent years, over a dozen jurisdictions in North Carolina have passed anti-tethering ordinances to regulate or entirely ban the chaining of dogs while unattended. Some jurisdictions, such as New Hanover County, have completely banned tethering dogs while unattended.[13] Other jurisdictions, such as the City of Raleigh, have placed restrictions on tethering. Under the Raleigh ordinance, a dog cannot be tied outdoors for more than three hours in any 24-hour period and any device used for tethering must be at least ten feet long, attached in a manner to prevent strangulation or entanglement.[14]

Crimes Involving Dogs

Fleeing from policemen, a suspect ran into his sister's backyard and stationed himself behind his sister's German Shepherd mix. When an officer approached, the suspect pushed the dog at the officer, called the dog by name, and said "bite him."[15] After tackling the suspect, the officer was bitten by the dog, who later bit another officer. The suspect was convicted of assault with a deadly weapon, the dog, and appealed on the ground of insufficiency of the evidence. Over the dissent of Judge Elmore, who stressed that the appellant did not own the dog and that the animal was not large in comparison to the police officers, the appellate court affirmed.

But a Wake County trial court in 2010 held the precedent—the defendant there, also charged with assault with a deadly weapon, had let run without restraint two pit bulls he owned, which attacked a child.[16] Dismissing the charge, the superior court focused on the absence of evidence that the defendant intended the dogs to attack their victim.

With rising attention to dog bites, several North Carolina jurisdictions have responded by enacting bans on certain breeds. The North Carolina General Statutes already provided for determination and regulation of dangerous dogs based upon their behavior.[17] The new local ordinances ban dogs solely on their breed, regardless of behavior. The breeds most commonly banned are pit bulls, rottweilers, wolf hybrids, and any mix thereof.[18]

Animal Shelters

Part of the state's Rabies Control Act, G.S. 130A-192, has long provided that stray animals picked up for not wearing rabies tags had to be held for 72 hours before being euthanized or adopted out, to give the owner of the animal a chance to reclaim the lost pet. Amendments to this statute effective in 2010 provide that:

- the shelter staff must, if it can be done at a reasonable cost, scan the animal for a microchip that might have information leading to locating the animal's owner;
- before an animal at the shelter can be euthanized, it must be put up for adoption unless found to be unadoptable due to injury, health problems, or temperament;
- members of the public be allowed to view all animals at the shelter for at least four hours a day, three days a week;
- dogs and cats wearing rabies tags that are picked up for other violations (e.g., of a leash law) must be held for 72 hours, as must animals surrendered to the shelter by someone claiming to be the owner unless that person presents proof of ownership and signs a writing that authorizes euthanasia before the 72-hour period has elapsed.

Some counties[19] claim that feral cats are not subject to the 72-hour holding period. The issue was before the court of appeals in 2005[20] and focused on the definition at that time of "cat" in G.S. 130A-184(2)—"a domestic feline." Whether this included feral cats—if so, they had to be held for 72 hours—was not decided by the majority, which held the 19A suit should be dismissed on a procedural ground. But Judge Levinson's separate opinion convincingly explains why section 130A-192 covers feral cats:

> The 72-hour hold is one small item in a comprehensive rabies control statute, which applies the same definitions [i.e., of "cat"] to all statutes in the rabies control section. Consequently, if stray...cats are excluded from the provisions of G.S. § 130A-192 [because they are feral], then they are excluded from the rest of the rabies section. In that event, the animal control officer would have no authority to take crucial measures to reduce the spread of rabies—a truly absurd interpretation....[21]

This analysis would apply as well after the General Assembly in 2009 redefined "cat" in the Rabies Control Act[22]—"A domestic feline of the genus and species Felis catus."

In general, if the owner of property (such as a pet) loses the property, which is taken into possession by someone else, the owner has three years under G.S. 1-52(4) to sue to recover possession. After that, title effectively shifts to the new possessor. But if the lost animal is taken to a county animal shelter, under G.S. 130A-192(a), the owner's title is forfeited to the county if the owner does not claim the animal within 72 hours. (The period can be made longer by county ordinance.) Before the recent amendments to G.S. 130A-192, a private rescue organization taking in lost animals could not effectively adopt them out, as the true owner would have up to three years to sue to reclaim the pet from the party who thought he or she had adopted the animal from the rescue organization.

As of 2010, the statute authorizes rescue organizations approved by the county to partner with it to bring a lost animal to the

county shelter. It can take the pet back to the organization's premises while posting at the shelter a photo of the animal. After 72 hours the shelter is authorized to transfer ownership of the animal to the organization,[23] which now can place it with an adopting family that need not fear a claim-and-delivery action by the former owner.

Enacted in 2005, G.S. 19A-70[24] creates a procedure applicable in criminal prosecutions for animal cruelty and in 19A suits brought by a city, county, or a government-appointed cruelty investigator, after a county animal shelter has taken physical custody of animals allegedly subject to cruelty. A court may order the defendant owner or possessor of the animals to post funds to pay for the upkeep of the animals while trial is pending. The amount to be posted is for 30 days of care (renewable until the trial ends), determined at an evidentiary hearing.

If the defendant does not pay the funds to the clerk of court within five days of being ordered to do so, his or her ownership of the animals "is forfeited by operation of law," after which the shelter may adopt out the animals that are adoptable and euthanize others not needed as evidence in the pending litigation.

In 2005, the definition of "animal shelter" in the Animal Welfare Act was amended to include not only privately owned and operated shelters, but also shelters owned, operated, or under contract with local governments.[25] Additionally, the North Carolina Department of Agriculture and Consumer Services amended the North Carolina Administrative Code's Animal Welfare Section to provide greater reporting and protection requirements for animals in all such shelters. The new requirements addressed many facets of the shelter, from the facilities in which animals are housed to how those facilities shall be maintained.[26] They further require a written program of veterinary care shall be established and each dog and cat shall be observed daily by the animal caretaker or someone under his direct supervision. "Sick or diseased, injured, lame, or blind dogs or cats shall be provided veterinary care or be euthanized,..."[27] An unfortunate consequence of the Animal Welfare Section of the administrative code has been the burden placed on private rescue groups, where animals are housed in foster situations in private residences that cannot except at great expense comply with the separation, sanitation, and structural requirements of animal shelter facilities.[28]

A new shelter staff position, certified euthanasia technician (CET), was recently created. CET's are closely regulated by the Department of Agriculture and Consumer Services.[29] Only a CET and veterinarian are permitted by law to euthanize animals at county shelters.

Miscellany

A Nashville town ordinance bans maintaining more than three dogs (limit two on small lots). The court of appeals in 2009 rejected an argument that it was unconstitutionally arbitrary for not permitting more than three small dogs whose total weight was less than that of three dogs of normal size.[30]

A lease clause authorized Landlord to order Tenant to remove any dog that "creates a nuisance." Landlord learned that Tenant's rottweilers had attacked neighbors, but took no action. Later, one of the dogs lunged at a visitor lawfully on the premises, causing him to fall and suffer injuries. Reversing the dismissal ordered by the court of appeals, the NC Supreme Court in 2004 held that, although Landlord could not be held strictly liable for injuries inflicted by a dog known to be vicious as can an owner or keeper of the dog, in this case Landlord had enough control to be liable on a negligence theory.[31]

Conclusion

In recent years animal law in North Carolina has evolved to provide increased protections. Lawmakers are recognizing that many animals deserve a certain standard of care and are willing to write that into law. In the 2010 short session, the General Assembly will consider at least one major animal-protection bill, seeking to regulate puppy mills. Advocates of a bill, filed but not passed in 2009, that would have banned euthanasia of dogs and cats at animal shelters by administering carbon monoxide gas have plans to reintroduce the bill in 2011. Yet North Carolina was recently ranked, nationally, with respect to the extent of protection provided animals by law, in only the middle tier of states, along with such states in our region as South Carolina, Georgia, and Florida.[32] There will thus be even more legislative battles to be fought for animals in North Carolina.

Meanwhile, North Carolina cities and counties may enact more local laws perceived by some to be anti-animal—those limiting the number of pets a person may keep and banning various breeds of dogs. Battles over these kinds of issues are being fought in many other states as well. ■

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Endnotes

1. This article updates Reppy, *A New Specialty: Animal Law*, NC State Bar *Journal*, spring 2002, at p. 12.
2. 2007 N.C. Stats, ch. 211, § 1. Section 2 added to the broad list in G.S. 14-360 of actors who are exempt from even felony prosecution for malicious infliction of suffering and for torture one who physically alters livestock to "conform[ ] with breed or show standards." Reppy, *Broad Exemptions in Animal-Cruelty Statutes Unconstitutionally Deny Equal Protection of the Law*, 70 Law & Contemp. Prob. 255 (2007), argues that G.S. 14-360's many exemptions make it unconstitutional because there is no rational basis for denying exemptions to unfavored actors who interact frequently with animals (such as horse trainers, dog groomers).
3. *State v. Coble*, 593 S.E.2d 109 (N.C. App. 2004).
4. 2005 N.C. Stats. ch. 437, § 1, amending N.C. Gen Stat. § 14-362.
5. *State v. Porter*, 16 S.E. 915 (N.C. 1893).
6. *Malloy v. Cooper*, 592 S.E.22d 17 (N.C. App. 2004). For the initial legislative response, see *Reppy*, supra n. 3, at 14.
7. 592 S.E.2d at 21-22.
8. 15A N.C. Admin Code 10B.0121, as recounted in *Malloy v. Cooper*, 678 S.E.22d 783, 785 (N.C. App. 2009).
9. N.C. Gen Stat. §§ 19A-1 *et seq*, discussed in detail in Reppy, *Citizen Standing to Enforce Anti-Cruelty Laws by Obtaining Injunctions: The North Carolina Experience*, 11 Animal Law 39 (2005).
10. *See* N.C. Gen. Stat. § 14-360. Oddly, cruelty is defined in this criminal statute so as to include inflicting of mental suffering on animals, but in the civil remedies legislation, the cruelty must be "physical." N.C. Gen. Stat. § 19A-1(2).
11. N.C. Const. art. IV, § 13, quoted in *Animal Legal Defense Fund v. Woodley*, 640 S.E.2d 772 (N.C. App. 2007).
12. 2006 N.C. Stats ch. 113; 2003 N.C. Stats, ch. 208.
13. Code County of New Hanover, North Carolina Sec. 5-4.
14. Raleigh Ord. No. 2009-552, § 2, 3-3-09, eff. 7-1-09.
15. *State v. Cook*, 594 S.E.2d 819, 820 (N.C. App. 2004).
16. The *News & Observer*, Jan. 21, 2010, p. B1.
17. N.C. Gen. Stat. § 67-4.1 and 67-4.2.
18. *Fayetteville Pets Examiner, Dog Breed Bans Taking Effect On More Military Bases*, www.examiner.com/x-5984-Fayetteville-Pets-Examiner~y2009m4d17-Dog-breed-bans-taking-effect-on-more-military-bases (2009).

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Red Dog Farm to the Rescue

By Mike Dayton

The Red Dog Farm Animal Rescue Network, established by Greensboro lawyer Garland Graham in 2006, draws its name and inspiration from Graham's golden retriever. As of February 2010, the nonprofit organization had rescued a menagerie of animals—887 and counting, including 346 cats, 343 dogs, 74 goats, 43 chickens, 23 horses, 14 rabbits, seven miniature horses, seven ducks, seven sheep, six pigs, five donkeys, four cows, three alpacas, two ponies, one turtle, one parakeet, and one emu.

When she's not rescuing animals in need, Graham practices law with Schell Bray Aycock Abel & Livingston PLLC, focusing on mergers and acquisitions, lending and finance, and general corporate. Graham has managed to find the balance between her law practice and a thriving nonprofit.

Graham's younger years were a million miles from farm life. She grew up at a beach in Florida, where she played tennis and swam on the local swim team.

"I had never been around any farm animals like horses or goats," she says.

Graham moved to North Carolina after college to be near her future husband. She brought her beloved golden retriever with her and immediately got involved with a golden retriever rescue group in the Greensboro area. Graham occasionally fostered other animals in search of a new home, and the word slowly got out.

"Somebody's daughter in college would find a stray dog, or somebody would find a litter of kittens in a parking lot, and they'd come find me," she says. "It was very informal, but we pretty much always had an extra dog or cat, or a litter of kittens in the house."

In 2003, Graham and her husband moved to his hometown of Summerfield, a small community about 12 miles north of Greensboro. They bought a house which adjoined a horse farm.

The couple's animal acquisition started innocently. Since there was more space on the new property, it felt natural to continue fostering other dogs and cats, Graham says.

"I said, 'Let's get a couple of chickens,'" she says. "Then I picked up two stray dogs that I found beside the road as I was returning from a business law seminar. We ended up keeping one of those dogs."

Then came the farm animals.

"People began to call us and say, 'My granddad just died and he had two old goats and an old horse, where do I take them?'" Graham recalls. "I did a little research and discovered there really wasn't anywhere to take them."

The United States Equine Rescue League accepted horses when room was available, but that group would not take

Above—Garland Graham with Red Dog Rescue Farm's mascot, Tallulah LaMoo. Tallulah (who is meeting some of her adoring fans in the photo below) was surrendered last year after being rejected by her mother due to being born with a cleft palate.

Above—Recently, Garland introduced her foster goat, Bella, (who she is currently bottle-feeding after she was surrendered by a farmer because her mother rejected her) to a friend's horse.

other farm animals.

"So my answer became, 'Bring them to me and I'll see if I can find a home for them,'" Graham says.

That's how the first goats and horses appeared at the Grahams' home. Graham knew very little about horses, so she learned as much as she could from the Equine Rescue League. She also began riding nearly every weekend, and she then bought a colt, which quickly became part of the expanding animal family.

"Then my husband bought a horse, because he figured out pretty quickly if he wanted to spend any quality time with me, he needed to start riding also," she says.

As the two fell in love with their horses, they became more concerned about the plight of other farm animals that could no longer be cared for or that were being neglected.

The Grahams suddenly found themselves with 18 animals, including two horses, two donkeys, an old pony, four goats, a pig, and four dogs. They also realized they had already adopted out 50 animals.

"We saw that the number coming in was quickly exceeding the number going out—and vet bills and feeding costs were getting exorbitantly expensive," she says. "And frankly, we were just running out of space. There was a need for another foster organization because the local groups could not handle the load, and no one could handle farm animals such as goats."

The idea for a nonprofit group took root from those realities. Jennifer L.J. Koenig, a trust and estate lawyer at Graham's firm who also handled nonprofit work, told Graham, "'You're running a nonprofit, but the difference is that you're paying for everything.'"

Nugget came to Red Dog Farm Rescue as a starvation case with four broken bones in his withers (shoulders). The photo to the left is from the day Nugget came to Red Dog (last September). "It breaks my heart to look at these now," Garland says.

You can see in the picture to the right where the veterinarian had to shave Nugget for surgery and his fur is now growing back in. According to Garland, "He is the sweetest horse ever!"

The time had come for an official organization. Graham sent out a letter to about 100 friends asking for their financial help in forming a nonprofit for animals of all sizes, with a special focus on farm animals.

"The response was overwhelming," she said. "We got pledges of well over $10,000, and that gave us the boost of adrenaline we needed," she says.

By September 2006, Graham had formed a North Carolina nonprofit and also applied for and received 501(c)(3) status.

Red Dog Farm's first big investment—a website.

"We spent about $2,000 of the money getting a website up and running," she says. "That seemed like a lot, but people told us you are only as good as your website. So we did that right."

The website allowed the group to post pictures and other updates of the foster animals coming in and being adopted by new families.

The group did not have a boarding facility, so instead it developed a patchwork of volunteers and foster homes, with the nonprofit covering all veterinary and food expenses. The nonprofit was run out of the Graham's home through the first half of 2008.

"It quickly took over our personal lives," Graham says. "With the organization outgrowing us, we needed to figure out a way to get our dining room back."

Thus began a search for inexpensive space where the organization could set up shop and adopters could come and meet volunteers and pick up animals.

In the summer of 2008, a Red Dog Farm volunteer saw the Guilford Sheriff's Department moving out of an old house it had been using as a substation in Bur-Mill Park. The park is a county-owned, city-operated facility on the north side of Greensboro. Within 48 hours, Red Dog Farm had signed a lease. The group has used the house as its headquarters since June 2008.

As Red Dog Farm expanded, Graham realized the nonprofit's day-to-day administration was outstripping her abilities to keep up.

"I was getting 30 to 40 e-mails a day and 50 calls a day," she says. "I was an attorney, and this is what I do for fun, but I can't do it all."

The group hired Lauren Riehle, who had been working with the Humane Society of the Piedmont, to help out three hours a day. Riehle's role was expanded to a full-time executive director by June 2009. Graham now handles the large animals, such as horses,

while Riehle manages the group's small animal program.

Even with full-time help, the nonprofit was now consuming about half of Graham's time. Graham had made partner in her law firm in 2006, but the day came when she had to sit down with her managing partner and discuss her role in the firm.

"I felt like my firm was getting the raw end of the deal because I was out of the office a lot meeting with people about the nonprofit," she says. "I had a heart-to-heart with my managing partner and said I'd been here eight years. I loved the firm and wanted to stay but felt the nonprofit was cutting into some of the firm's time. I didn't feel right about it. I told him I could do both, but not on a full time basis."

The partnership worked out a plan, reducing her billable hour target and her compensation to a level where both parties were comfortable. They have been in that arrangement for two years.

"In December, when we're really busy at work, I must step back and be a full-time lawyer," she says.

The nonprofit is stable financially thanks to monthly fundraising events and several bigger fund raisers, including a dog fashion show, Dogs on the Catwalk, at a downtown theater.

Red Farm sends out a monthly e-letter and also mails a year-end letter to everyone who has adopted an animal or made a donation. This year, Red Farm sent out about 1,000 letters.

"The letter was short and sweet, saying this is where we are and what we've done in adopting out 1,000 animals," Graham says. "We included a pledge form and again raised about $10,000."

Graham and her husband have now personally fostered more than 250 animals.

"Right now I have an extra horse and three goats living with me," she says.

Asked about success stories, Graham lists the very sick, emaciated, and mistreated animals that flourish once they come under Red Farm's care.

"When I first saw the horse Coco, I thought she would not make it back to our farm alive," Graham recalls. "She was just that sick and thin. But she gained 330 pounds in 10 weeks living with us. She ended up being a stunning mare and now has a good home in Apex."

Red Farm still does not have a central kennel. The group's long-range goal is a consolidated location where it can care for all of the animals.

"Having animals in multiple foster locations is pretty inefficient," Graham says, "especially for animals that need to be quarantined until we have their shots in order. So five years down the road is about when we will be in the throes of a capital campaign and a building phase to build Second Chance Ranch." ■

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For additional information on Red Dog Farm Animal Rescue, please visit their website—www.reddogfarm.com.

The Intersection of the First Amendment and Professional Ethics for Government Attorneys

By Christopher B. McLaughlin

First Amendment protection exists for government employees, but not to the same extent as it does for everyone else. The ability of government employees to exercise their First Amendment rights is limited by their employers' interest in providing effective and efficient services to the public. Government employees who are also attorneys face additional limitations on their speech due to their professional responsibility obligations under State Bar rules.

Speech that would generally be protected by the First Amendment may be prohibited by an attorney's duty of confidentiality. Other speech required by an attorney's professional responsibility obligations may not be protected by the First Amendment. This imperfect overlap between the First Amendment and an attorney's ethical duties creates two interesting constitutional conundrums, which are analyzed at the end of this article.

The First Amendment and Government Employees

Until the mid-twentieth century, governments could condition public employment on the near-complete waiver of First Amendment rights. As Oliver Wendell Holmes observed when sitting on the Supreme Court of Massachusetts, "A policeman may have the constitutional right to talk politics, but he has no constitutional right to be a policeman."[1]

Beginning in the 1950s, the Supreme Court began to expand First Amendment protection for government employees. The court first struck down loyalty oaths banning membership in particular political parties and later invalidated statutes prohibiting public agencies from hiring members of "subversive" organizations.[2] In 1968 the Supreme Court expanded First Amendment protection for government employees when it ruled unconstitutional

the firing of a public school teacher for publicly criticizing the spending decisions of the local board of education. *Pickering v. Board of Education*, 391 U.S. 563 (1968), was the first high court case to make clear that public employees do not relinquish their First Amendment rights to comment on matters of public concern simply because they are employed by the government.

However, the government's authority to limit the free expression of its employees remains far greater than its ability to limit the free expression of common citizens. "Government employers, like private employers, need a significant degree of control over their employees' words and actions; without it, there would be little chance for the efficient provision of public services."[3]

Two Foundational Cases

Two Supreme Court cases deserve extended analysis because of their foundational roles in government employee free speech jurisprudence and because they involve attorneys as plaintiffs. *Connick v. Myers*, 461 U.S. 138 (1983), firmly established the current test for whether the speech in question touches on a matter of public concern, while *Garcetti v. Ceballos*, 547 U.S. 410 (2006), added a new requirement that the speech be outside of the employee's job duties to receive First Amendment protection.

Connick v. Myers—In 1980 Harry Connick Sr., the New Orleans district attorney, fired an assistant district attorney, Sheila Myers, for her vocal opposition to a proposed transfer. Myers distributed a survey to her colleagues concerning internal office operations, which included a question about whether employees felt pressured to work on political campaigns. After her termination, Myers sued under 42 U.S.C. § 1983, claiming she was terminated for exercising her First Amendment right to free speech. She prevailed at trial and at the United States Court of Appeals for the Fifth Circuit.

In the Supreme Court, the key question was whether Myers's in-office survey constituted speech on a matter of public concern. "When employee expression cannot fairly be considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices without intrusive oversight by the judiciary in the name of the First Amendment," stated the Court.[4] The five-justice majority concluded that the primary purpose of Myers's survey was to "gather ammunition" for a battle with her supervisors over the transfer. But for the question about forced participation in political campaigns, Myers's survey was not related to a matter of public concern and therefore was not deserving of First Amendment retaliation protection.

As for the question involving political campaigns, the majority believed it touched upon a matter of public concern minimally, at best. Myers's limited First Amendment interest in that one question was outweighed by Connick's interest in maintaining an effective and successful office, largely because of the manner, time, and place of Myers's speech. Accepting Connick's characterization of Myers's conduct as a "mini-insurrection" that justified a harsh response, the Supreme Court rejected Myers's attempt to "constitutionalize an employee grievance" and ruled for her employer.

Garcetti v. Ceballos—Nearly 25 years after *Connick*, the Supreme Court heard a free speech case involving another fired district attorney, Richard Ceballos. When a defense attorney complained about inaccuracies in an affidavit used to obtain a critical search warrant, Ceballos investigated the matter and determined there were serious misrepresentations in the affidavit. After Ceballos's boss rejected his recommendation that the criminal case be dismissed, Ceballos claimed that he was transferred and denied a promotion because of his speech about the affidavit. He sued under 42 U.S.C. § 1983, lost in district court on summary judgment, but prevailed in the Ninth Circuit Court of Appeals.

In the Supreme Court, the case turned on the five-justice majority's conclusion that Ceballos's speech was made pursuant to his duties as an assistant district attorney. "Restricting speech that owes its existence to a public employee's professional responsibilities does not infringe upon any liberties the employee might have enjoyed as a private citizen. It simply reflects the exercise of employer control over what the employer itself has commissioned or created."[5] To hold otherwise, wrote Justice Stevens, would be to commit the courts to an overly intrusive role of monitoring all business-related communications throughout all levels of government. The Supreme Court reversed the Ninth Circuit and found in favor of the government.

Current Five-Part Test

Since *Garcetti*, lower courts have applied a five-part test to First Amendment free speech claims raised by government employees. Although the order of the first two inquiries sometimes changes, these five questions now control claims similar to those brought by Myers and Ceballos:

1. Did the employee's speech touch upon a matter of public concern?

2. Was the speech made as part of the employee's job duties?

3. Did the government take adverse employment action that was substantially motivated by the employee's speech?

4. Did the government's legitimate interest in providing efficient and effective services to the public outweigh the employee's First Amendment rights?

5. Would the government have taken the adverse employment action even in the absence of the protected speech?

If the plaintiff produces enough evidence to answer the first three questions affirmatively, then the burden shifts to the government for the remaining two questions.[6]

1. Did the employee's speech touch upon a matter of public concern?

Connick makes clear that the speech in question must be more than simply a complaint about the employee's working conditions to warrant First Amendment protection. As the Fourth Circuit observed, "A government employee's right to gripe about the conditions of his or her job is protected to the same degree as that of private employees, as only under such condition is efficient government service possible."[7] Simply put, the First Amendment does not guarantee that all government employees will be treated nicely by their supervisors.[8] That said, speech that concerns public health and safety, corruption, or unconstitutional discrimination is almost always considered a matter of public concern, even if the speech also touches on individual working conditions.[9]

2. Was the speech made as part of the employee's job duties?

Garcetti held that speech within the scope of a government employee's official responsibilities does not warrant First Amendment protection. How should courts make this determination? Responding to criticism from a dissenting opinion in *Garcetti*, Justice Kennedy stated that formal job descriptions should not control; instead, "[t]he proper inquiry is a practical one."[10]

The *Garcetti* inquiry focuses on the *context* of the speech even more than its *content*. The same speech that is unprotected when uttered to a boss or coworker may be protected when uttered outside of the office, an "oddity" lower courts are obliged to respect after *Garcetti*.[11] As a result, courts generally treat internal speech different from external speech.

1. Internal speech generally is not protected, unless the speech concerns matters clearly outside the scope of the employee's job duties. Internal speech includes complaints directed up the employee's chain of supervisors, even to the agency's most senior officials, as well as comments made in response to an internal agency investigation.[12]

2. External speech, such as comments to the media, generally is protected regardless of content, unless the employee's job duties include the type of external speech at issue. Testimony in a civil or criminal judicial proceeding usually is considered protected external speech, even if the content of that speech is directly related to an employee's job duties.[13]

3. Did the government take adverse employment action that was substantially motivated by the employee's speech?

The definition of *adverse employment* action varies from circuit to circuit. All federal courts agree that this term includes a termination, demotion, or refusal to promote.[14] The Fourth Circuit is one of several that conclude the First Amendment also protects an employee who can show "that he was deprived of a valuable government benefit or adversely affected in a manner that, at the very least, would tend to chill his exercise of First Amendment rights."[15]

After producing evidence of an adverse employment action, the plaintiff must then demonstrate that the protected speech was a substantial or motivating factor behind that action. The protected conduct need not be the only reason or the primary reason for the adverse employment action, but merely one of the reasons.[16]

4. Did the government's legitimate interest in providing efficient and effective services to the public outweigh the employee's First Amendment rights?

The government's interests are most at risk when the contested speech occurs in the office and impedes other employees from accomplishing their job responsibilities.[17] The Fourth Circuit interprets this balancing test to require an analysis of the nature of the employee's position, the context of the employee's speech, and the extent to which it disrupts the department's activity.[18] Generally speaking, the more the employee's job requires "confidentiality, policy making, or public contact, the greater the state's interest in firing her for expression that offends her employer."[19]

5. Would the government have taken the adverse employment action even in the absence of the protected speech?

If the plaintiff produces evidence of an adverse employment action that was based at least in part on the plaintiff's protected speech, the government can still defeat the First Amendment claim by demonstrating that it would have made the same employment decision even if the plaintiff had not uttered that speech.[20]

The First Amendment and the Rules of Professional Conduct

When attorneys gain admission to the bar and enter into professional relationships with clients, they implicitly agree to restrain their speech on certain issues. The North Carolina Rules of Professional Conduct (RPC) do not trump the First Amendment, of course, but they can create additional limitations on when, where, and how a government attorney may engage in certain speech.

RPC Rule 1.6: Confidentiality

Attorneys are forbidden to disclose any "information acquired during the professional relationship" unless the client provides informed consent, a duty far broader than the attorney-client privilege. The privilege is an evidentiary rule that covers only confidential communications made for a non-criminal purpose between an attorney and client in the course of giving or seeking legal advice.[21] In contrast, the duty of confidentiality covers *all* information the attorney learns while working for the client, regardless of source, purpose, or context. The duty of confidentiality is so broad that it could forbid speech by a government attorney that would be protected by the First Amendment, a conundrum discussed in more detail below.

At least 13 states require disclosure by attorneys to prevent some types of criminal acts, usually those likely to cause injury or death.[22] North Carolina is not one of those states. North Carolina attorneys are permitted, but not required, to disclose a client's confidential information in seven situations, including when disclosure might prevent the commission of a crime by the client.

RPC Rule 1.13: Organization as Client

An attorney representing an organization must put the organization's interests above the interests of the organization's individual agents, employees, and officers. For example, an attorney representing a town must disclose to the town council a meeting involving the attorney, the mayor, and other parties despite the mayor's request that the attorney keep the meeting a secret.[23]

Unlike Rule 1.6, Rule 1.13 *requires* certain speech by organizational attorneys. A government attorney may be required by this rule to speak on subjects and in settings that do not trigger First Amendment protection, a second potential constitutional conundrum analyzed below. An attorney representing an organization is obligated to speak under Rule 1.13 when he or she knows that an employee, officer, or agent has acted or will act in a matter related to the attorney's representation and in a manner likely to cause substantial injury to the organization and the act is either (1) a violation of a legal obligation to the organization or (2) a violation of law that could be imputed to the organization.[24] When such a situation arises, the attorney is obligated to report the matter up the organization's chain of command to the "highest authority that can act on behalf of the organization," unless the attorney reasonably believes that such internal disclosure is not in the organization's best interests.

Are the voters the "highest authority" that can act on a government's behalf? Comment 5 to Rule 1.13 appears to rule out that interpretation by observing that an organization's highest authority is generally its "board of directors or similar governing body." For an attorney representing a local government, the highest authority should be the local governing board. For an attorney representing a discrete unit of local government, the highest authority is likely the head of that unit.[25] For an attorney representing the state, the highest authority could be a department secretary, the General Assembly, or the governor, depending on whom the attorney considers to be the client.[26]

If the issue is not resolved by the organi-

zation's highest authority, then Rule 1.13(c) permits, but does not require, the attorney to disclose the issue publicly if (1) it involves a clear violation of law and (2) it is likely to cause substantial injury to the organization. However, the attorney may do so only "to the extent permitted by Rule 1.6." This limitation, which does not appear in the American Bar Association's model version of the rule, means that unless the issue involves one of the exceptions to the Rule 1.6 duty of confidentiality discussed above, a North Carolina attorney is not permitted to make a public disclosure under Rule 1.13.

RPC Rule 3.3: Client Perjury

Under the RPC, the sanctity of the attorney-client relationship is trumped only by the integrity of the judicial process. The only situation in which a North Carolina attorney is obligated to disclose a client's confidences is when the client or the client's witness commits perjury or a similar fraud upon the court. Rule 3.3 requires an attorney to take all "reasonable remedial measures, including, if necessary, disclosure to the tribunal" once the lawyer realizes that the client has offered or will offer false material evidence or is engaged in fraudulent activity relating to the proceeding.

Could the obligation to remedy client perjury create a situation similar to that under Rule 1.13 in which speech is mandated by the RPC but unprotected by the First Amendment? Probably not. The mandated disclosure by a government attorney of a government client's perjury to the court would almost certainly be protected under the *Connick/Garcetti* test. First, the commission of a crime—perjury—by a government official should be considered a matter of public concern. Second, disclosing misconduct to an external agency—in this case, the court—is usually viewed as speech that falls outside of the scope of a government employee's duties. If either of these conditions apply, then the disclosure mandated by Rule 3.3 would be protected by the First Amendment.

RPC Rule 8.3: Reports of Professional Misconduct

Attorneys are required to report misconduct by another attorney "that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer." The North Carolina State Bar has applied this rule to the misappropriation of client funds, the deliberate violation of settlement conditions, and the abuse of a district attorney's trial calendaring authority.[27] Similar to Rule 1.13, the obligation to report another attorney's misconduct is restrained by Rule 1.6 and does not permit the reporting attorney to violate the duty of client confidentiality.[28] The obligation to report professional misconduct raises another possibility of an attorney being forced by the RPC to speak without assurance that the First Amendment will protect the attorney from retaliation from his or her government employer.

Two Constitutional Conundrums

Unfortunately for government attorneys, the First Amendment and the RPC are not perfectly aligned. Some speech may be protected by the First Amendment but still lead to adverse consequences under the RPC. Other speech may be permitted or even required by an attorney's ethical obligations but not protected by the First Amendment.

Speech protected by the First Amendment but prohibited by the RPC. The broad scope of Rule 1.6 means that a government attorney is prohibited by ethical considerations from speaking about many topics that would be protected by the First Amendment. Consider a scenario in which Attorney Smith, the recently hired county attorney for Carolina County, is terminated after disclosing to a newspaper reporter a pattern of "secret" business meetings by a majority of the county commissioners.

Smith's speech to the newspaper would probably be protected by the First Amendment. The commissioner's willful violation of state open meetings law is clearly a matter of public concern, and Smith's speech to the media seems likely to be outside the scope of normal job duties for a county attorney.[29] However, it seems equally likely that Smith's speech to the newspaper violates her duties under the RPC. Public disclosure of a violation of open meetings law does not appear to satisfy any of the exceptions to client confidentiality under Rule 1.6. The remedies for a violation of the open meetings law are civil in nature, not criminal.[30] Thus the most likely Rule 1.6 exception, that intended to prevent the commission of a crime by the client, would not apply.

Nor does Rule 1.13 offer any help to Attorney Smith. The county commissioners are the highest authority that can act on behalf of the county, meaning there is no opportunity for Smith to report the matter up the internal chain of command. The rule's option of reporting the misconduct externally is limited by the attorney's obligations under Rule 1.6; because no exceptions to the duty of client confidentiality apply, Rule 1.13 would not authorize external disclosure by Smith.

Could the county fire Smith for conduct protected by the First Amendment but prohibited by the RPC? The answer must be yes—it is almost unimaginable that a client would have the ability to seek ethical sanctions against an in-house attorney for violating the RPC but would not have the ability to terminate its employment relationship with that attorney.[31]

Speech required by the RPC but not protected by the First Amendment. The RPC mandates speech by attorneys in at least three circumstances:

1. to report serious wrongdoing up the internal chain of command (Rule 1.13);

2. to remedy client perjury or fraud upon the court (Rule 3.3);

3. to report another attorney's serious misconduct if the misconduct can be reported without violating the duty of confidentiality (Rule 8.3).

Is any of this compelled speech protected by the First Amendment? As discussed above, speech mandated by Rule 3.3 would likely be protected by the First Amendment because it would touch on a matter of public concern and be outside the scope of the attorney-employee's duties. The same is not always true of speech mandated by Rule 1.13 or Rule 8.3.

Consider the example of Attorney Jones, an assistant city attorney fired after informing the city manager of what Jones believes to be the inappropriate destruction of evidence by the city attorney. Does Jones have a viable First Amendment retaliation claim against the city? Probably not. Jones's reporting to the city manager of the city attorney's misconduct was likely required under Rule 1.13, but such speech is not necessarily protected by the First Amendment. Certainly destruction of evidence by the government should constitute a matter of public concern. But reporting legal misconduct by a supervisor up the internal chain of command could be considered part of the expected duties of an assistant city attorney. If so, then Jones's speech to the city manager would not be protected by the First Amendment, despite

the fact that it was required by the RPC.

Even if the First Amendment offers no protection, Jones still might be able to attack the city's decision to terminate his employment through a wrongful discharge claim. Most jurisdictions recognize these claims by in-house attorneys.[32] However, North Carolina appears to be one of several states that permits wrongful termination claims by in-house attorneys only if they can be proved without the disclosure of confidential information, a requirement that could effectively bar such claims.[33] State whistleblower statutes could provide an alternative for wronged government attorneys, but in North Carolina this option exists only for state employees, not local government employees.[34] ■

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Endnotes

1. *McAuliffe v. Mayor of New Bedford*, 155 Mass. 216, 220, 29 N.E. 517, 517 (1892).
2. *See Wiemann v. Updegraff*, 344 U.S. 183 (1952) (striking down loyalty oaths); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967) (striking down subversive organization statutes).
3. *Garcetti v. Ceballos*, 547 U.S. 410, 418-19 (2006).
4. *Connick v. Myers*, 461 U.S. 138, 146, 147 (1983).
5. *Garcetti*, 547 U.S. at 421-22, 424.
6. *See Eng v. Cooley*, 552 F.3d 1062 (9th Cir. 2009).
7. *Arvinger v. Mayor and City Council of Baltimore*, 862 F.2d 75 (4th Cir. 1988).
8. *Ruotolo v. City of New York*, 514 F.3d 184, 190 (2nd Cir. 2008) (concluding that "a generalized public interest in the fair or proper treatment of public employees" does not alone trigger First Amendment protection).
9. *See Jones v. Quintana*, F. Supp. 2d, 2009 WL 3126544 (D.D.C. 2009), in which the court concluded that a 911 dispatcher's complaints about a new system for routing 911 calls were intended to protect public safety and not simply to minimize the dispatcher's workload.
10. *Garcetti v. Ceballos*, 547 U.S. 410, 424-25 (2006).
11. *Morales v. Jones*, 494 F.3d 590, 598 (7th Cir. 2007) (speech by police officer to assistant district attorney part of job duties and therefore unprotected, but same speech as part of civil deposition testimony outside of job duties and therefore protected).
12. *Davis v. McKinney*, 518 F.3d 304 (5th Cir. 2008) (complaints made to both the employee's immediate supervisor and the president of her university division were not protected because the complaints concerned matters within employee's job responsibilities); *Vila v. Padron*, 484 F.3d 1334 (11th Cir. 2007) (complaints to university president and board of trustees about legal improprieties made by university vice-president/general counsel not protected); *Jackson v. Mecklenburg County*, 2008 WL 2982468 (W.D.N.C. 2008) (holding that allegations made during internal investigation of discrimination not protected because all agency employees were expected to cooperate with the investigation as part of their job duties); *Wright v. City of Salisbury*, F. Supp. 2d, 2009 WL 2957918 (E.D.Mo. 2009) (police officer's letter to city council about city's drunken driving enforcement policies protected because police officer's job duties did not include policy making).
13. *Andrew v. Clark*, 561 F.3d 261 (4th Cir. 2009) (indicating police officer's release of internal memo to newspaper could constitute protected speech); *Casey v. West Las Vegas Indep. Sch. Dist.*, 473 F.3d 1323 (10th Cir. 2007) (school superintendent's reports to supervisors and federal agency about problems in the Head Start program not protected because her job duties required such reports, but complaints to state attorney general about open meeting law violations were protected because her job duties did not involve reporting such legal problems to external agencies); *Reilly v. Atlantic City*, 532 F.3d 216 (3rd Cir. 2008) (finding that police officer's testimony in a criminal prosecution of fellow officer was protected, after reviewing case law and noting that *Garcetti* did not address the plaintiff's testimony in that case). *But see Nixon v. City of Houston*, 511 F.3d 494 (5th Cir. 2007) (police officer's comments to media while on duty and in uniform at the scene of an accident were part of officer's job duties, despite fact that the comments were unauthorized and made against the wishes of his superiors).
14. *Ridpath v. Board of Governors Marshall Univ.*, 447 F.3d 292, 316 (4th Cir. 2006).
15. *Goldstein v. Chestnut Ridge Volunteer Fire Dep't Co.*, 218 F.3d 337, 352 (4th Cir. 2000) (suspension of volunteer firefighter constituted adverse employment action). In a footnote sometimes dismissed as dicta, the Supreme Court seemingly blessed an expansive definition of adverse employment action: "Moreover, the First Amendment, as the court below noted, already protects state employees not only from patronage dismissals but also from even an act of retaliation as trivial as failing to hold a birthday party for a public employee...when intended to punish her for exercising her free speech rights." *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 76 n.8 (1990) (internal citations omitted). *But see Benningfield v. City of Houston*, 157 F.3d 369 (5th Cir. 1998) (reprimands and false accusation of criminal wrongdoing do not constitute adverse employment actions under First Amendment).
16. *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977); *Speigla v. Hill*, 371 F.3d 928, 942 (7th Cir. 2004) (citing unanimity among the circuits on this interpretation).
17. *Connick v. Myers*, 461 U.S. 138, 146, 151 (1983).
18. *McVey v. Stacy*, 157 F.3d 271, 278 (4th Cir. 1998).
19. *Sheppard v. Beerman*, 190 F. Supp. 2d 361, 374 (E.D.N.Y. 2002) (holding that a judge's interest in maintaining an effective workplace trumped the First Amendment interest of the judge's clerk because "a law clerk is often privy to a judge's thoughts and decision-making processes").
20. *See Eng v. Cooley*, 552 F.3d 1062 (9th Cir. 2009).
21. *In re Miller*, 357 N.C. 316, 335 (2003).
22. See Susan R. Martyn, Lawrence J. Fox & W. Bradley Wendel, *The Law Governing Lawyers: National Rules, Standards, Statutes, and State Lawyer Codes* (2009-2010 ed.).
23. N.C. Ethics Op. CPR 154.
24. RPC Rule 1.13(b).
25. *See NC State Bar v. Koenig*, 04 DHC 41 (2005) (disciplining attorney representing sheriff's office for failing to pursue allegations of sexual harassment to a final decision by the office's highest authority, the sheriff).
26. RPC Rule 1.13, Comment 9.
27. 89 NC Disciplinary Hearing Committee 5; NC Ethics Op. RPC 127; NC Ethics Op. RPC 243.
28. RPC Rule 8.3, Comment 3.
29. Even if an employee is expected to respond to media inquiries on certain topics, self-initiated comments to the media about topics the employer has demanded the employee keep confidential probably would be considered outside of the scope of that employee's job duties. *See Snelling v. City of Claremont*, 931 A.2d 1272 (N.H. 2007) (fact that tax assessor's job duties included talking to the media about certain tax issues did not mean that all comments to the media by the assessor were within his scope of employment).
30. *See* N.C. Gen. Stat. (hereinafter G.S.) § 143-318.16 (authorizing injunctive relief for violation of open meetings laws) and G.S. 143-318.16A (authorizing the invalidation of acts by a public body made in violation of open meetings laws).
31. *See Douglas v. DynMcDermott Petroleum Operations Co.*, 144 F.3d 364 (5th Cir. 1998) (public disclosure of client confidences by an in-house attorney that violated State Bar rules justified the termination of the attorney, despite the fact that the disclosures would have been considered "protected activity" under Title VII had they been made by a nonattorney employee). A lower court later relied on *Douglas* to conclude that an attorney most likely could not base a First Amendment retaliation claim on speech that violated the attorney's duty of confidentiality. *Washington v. Davis*, 2001 WL 1287125 (E.D.La. 2001).
32. *See Crews v. Buckman Laboratories Int'l, Inc.*, 78 S.W.3d 852 (Tenn. 2002) (permitting wrongful discharge claim by in-house counsel who alleged she was terminated after satisfying State Bar ethics obligation to report her supervisor's practice of law without a license); ABA Formal Ethics Op. 01-424 (Model Rules do not prohibit former in-house counsel from suing former employer for wrongful termination and from revealing confidential information necessary to establish claim).
33. *See Considine v. Compass Group USA, Inc.*, 145 N.C. App. 314 (2001) (dismissing attorney-employee's wrongful discharge action for failing to state a claim and, in the view of the dissent, "deny[ing] in-house attorney-employees the ability to allege with particularity their wrongful termination of employment claims" because of fear they will violate confidentiality duties under Rule 1.6). *Considine* appears to ignore a 2000 ethics opinion from the North Carolina State Bar that concluded an attorney-employee should be able to pursue a wrongful discharge claim by alleging just enough to put the employer on notice of the claim and then obtaining permission of the court to reveal confidential client information in further support of the claim. NC Ethics Op. 2000-11.
34. G.S. 126-84 and G.S. 126-85 prohibit the state from retaliating against employees for their disclosure of government misconduct. Importantly, the statute protects only reports to the employee's "supervisor, department head, or other appropriate authority," not disclosure to the media or public generally.

Bad Faith in North Carolina Insurance Contracts: A Growing Part of Insurance Practice

By Constance A. Anastopoulo

As insurance contracts and the obligations associated therewith grow more complicated and far-reaching, courts have witnessed an increase in the number of bad faith claims being filed and litigated, both nationally and regionally. It is important to realize that with each decision, the doctrine of bad faith—a judicially created doctrine—is subject to potential change. Since the business of insurance is greatly affected with public interest policies, this escalation in claims raises substantial implications regarding the insurer-insured relationship.

At the heart of most insurance contract disputes are several competing interests. Insureds, who lack equal bargaining power with the insurer, contract only to protect themselves against the specter of accidental or unavoidable loss. To the insured, therefore, a policy of insurance is only as good as the insurer's willingness to pay claims in whatever context the claim arises. Stated another way, the insured's confidence in the insurance contract is only as secure as his or her reasonable belief the policy will ade-

quately provide him or her protection. At the same time, insurance companies have a vested interest in being able to accurately predict their obligations and make appropriate business decisions that will foster economic success, which translates into its ability to pay its obligations for the benefit of its policyholders. This article seeks to provide an overview of bad faith in insurance contracts in general and as it presently exists in North Carolina.

Bad Faith in General

A claim for bad faith typically arises in either the first- or third-party context. *See, e.g., Rakes v. Life Inv. Ins. Co. of Am.*, 582 F.3d 886, 895-96 (8th Cir. 2009).

First-party bad faith deals with the insurer's conduct in determining whether to indemnify the insured for loss suffered personally. *See generally George J. Kefalos, et al., Bad-Faith Ins. Litigation in the South Carolina Practice Manual*, 13-AUG S.C. LAW. 18 (2001). Historically, courts construed a denial of benefits as a breach of contract and limited recovery accordingly. The nature of the insured-insurer contractual relationship, however, led to the emergence of a tort claim, providing additional theories of recovery intended to address the unique characteristics of the insurance contract. California was the first state to recognize an action for bad faith handling of a claim for first-party benefits in *Gruenberg v. Aetna Insurance Company*, 9 Cal. 3d 566, 108 Cal.Rptr. 480, 510 P.2d 1032 (1973).

Third-party bad faith, on the other hand, concerns the insurer's conduct in handling the insured's claim for coverage under a liability insurance policy. In this context, an insured files a claim for a defense to a third party's suit instituted against the insured and indemnification for the costs of any judgment suffered. Stated another way, the insurer owes two duties: (1) to defend a claim even if some or most of the lawsuit is not covered by insurance; and (2) to indemnify—to pay the judgment against the policy holder up to the limit of coverage. As these are contractual obligations, insurers must act with the utmost good faith and fair dealing in determining whether to and ultimately carrying out these duties.

Once the insurer has assumed control of the defense, including the right to accept or reject settlement offers, the implied duty of good faith and fair dealing requires the insurer to put the insured's interests on equal footing with its own. Thus, there is a duty to settle a reasonably clear claim against the policyholder within the policy limits to avoid exposing the policyholder to the risk of a judgment in excess of the policy limits. *See, e.g., Frontier Insulation Constr. v. Merch. Mut. Ins. Co.*, 91 N.Y.2d 169, 175-78 (1997).

Closely tied to this "duty to settle" is the concept of the excess liability claim. The claim first arose in *Crisci v. Security Insurance Company*, 66 Cal. 2d 425, 426 P.2d 173 (1967), where a third party offered to settle within the policy limits. *Id.* at 428, 426 P.2d at 175. After the insurer refused the offer, the insured suffered a judgment at trial substantially exceeding the policy limits. *Id.* at 428, 426 P.2d at 176. The insurer thereafter paid out only the policy limit, which it considered the extent of its contractual obligation. *Id.* at 428, 426 P.2d at 176. Consequently, the insured sued the insurer for: (1) loss of property; (2) mental distress; and (3) the amount by which the judgment exceeded the policy limits, all of which were caused by the insurer's refusal to settle. *Id.* at 427, 426 P.2d at 175. The court looked to the insurer's conduct in handling the third-party claim to determine the insurer's excess liability. *Id.* Guiding this inquiry was whether a reasonably prudent insurer without policy limits would have accepted the settlement offer. *Id.* at 430-32, 426 P.2d at 176-78. Although inconclusive, a judgment in excess of the policy limits raises the inference that accepting the offer was reasonable. *Id.* at 430, 426 P.2d at 176-77. Furthermore, rejection of such an offer renders the insurer liable for the amount of the final judgment whether or not within policy limits. *Id.*

Bad Faith in North Carolina

As North Carolina courts carved out the state's own bad faith jurisprudence over the years, they wrestled with the bad faith tort-contract distinction as well as the type of damages recoverable in this peculiar cause of action. At the heart of this struggle, however, is a recognition that "[a]n insurance company is expected to deal fairly and in good faith with its policyholders." *Robinson v. NC Farm Bureau Ins. Co.*, 86 N.C. App. 44, 50, 356 S.E.2d 392, 395 (1987), *disc. review denied*, 321 N.C. 592, 364 S.E.2d 140 (1988). It is also axiomatic that damages for breach of contract should seek to place the injured party, as much as possible, in the position he or she would have occupied had the contract been performed. *See generally Burrell v. Sparkkles Reconstr. Co.*, 189 N.C. App. 104, 657 S.E.2d 712 (N.C. App. 2008). Logically therefore, a breach of contract claim should only yield the plaintiff damages in the amount of coverage called for by the policy. *Nationwide Mut. Ins. Co. v. Mabe*, 115 N.C. App. 193, 198, 444 S.E.2d 664, 667 (1994). Nevertheless, due to the ever-increasing number of claims for bad faith, the distinction between breach of contract and bad faith tort actions led courts to promulgate rules permitting recovery in tort, including punitive damages.

In 1976, the North Carolina Supreme Court in *Newton v. Insurance Company* reviewed the judicial history of attempts to obtain punitive damages in breach of contract cases and affirmed the trial court's dismissal of the punitive damages claim, reasoning:

> The breach of contract represented by defendant's failure to pay is not alleged to be accompanied by either fraudulent misrepresentation or any other recognizable tortuous behavior. [T]he allegations in the complaint of oppressive behavior by defendant in breaching the contract are insufficient to plead any recognizable tort. They are, moreover, unaccompanied by any allegation of intentional wrongdoing other than the breach itself even were a tort alleged. Punitive damages could not therefore be allowed even if the allegations here considered were proved.

291 N.C. 105, 114, 229 S.E.2d 297, 302 (1976). In other words, the plaintiff must show something more than a mere refusal to pay in order to recover punitive damages—the plaintiff must show: (1) a refusal to pay after recognition of a valid claim; (2) bad faith; and (3) aggravating or outrageous conduct. *Michael v. Metro Life Ins. Co.*, 631 F. Supp. 451, 455 (W.D.N.C. 1986). Generally, an insurer acts in bad faith when its refusal was "not based on honest disagreement or innocent mistake." *Daily v. Integon Gen. Ins. Corp.*, 75 N.C. App. 387, 396, 331 S.E.2d 148, 155 (1985), *disc. rev. den'd*, 314 N.C. 664, 336 S.E.2d 399 (1985). "Aggravation" has been defined to include fraud, malice, such a degree of negligence as indicates a reckless indifference to plaintiff's rights, oppression, insult, rude-

ness, caprice, and willfulness. *Newton v. Ins. Co.*, 291 N.C. 105, 112, 229 S.E.2d 297, 301 (1976). Thus, a bad faith refusal to provide the coverage or to pay a warranted claim may give rise to a claim for punitive damages. *von Hagel v. Blue Cross and Blue Shield*, 91 N.C. App. 58, 68, 370 S.E.2d 695, 691 (1988). A plaintiff satisfies the aggravation requirement by sufficiently pleading specific instances of willful or reckless conduct accompanying the breach of contract and the purported bad faith. *Payne v. NC Farm Bureau Mut. Ins. Co.*, 67 N.C. App. 692, 694, 313 S.E.2d 912, 913 (1984). This requirement stems, at least in part, from a desire to prevent surprise or confusion to the insurer and "to preclude recovery of punitive damages for breach of contract where there is no tortious conduct" accompanying the breach. *Shugar v. Guill*, 304 N.C. 332, 337, 283 S.E.2d 507, 510 (1981). Whether the alleged facts satisfy the aggravated conduct element so as to support a claim for punitive damages is ultimately a question for the trier of fact. *Smith v. Nationwide Mutual Fire Ins. Co.*, 96 N.C. App. 215, 219, 385 S.E.2d 152, 154 (1989), *disc. review denied*, 326 N.C. 365, 389 S.E.2d 816 (1990).

In addition to the potential avenues of recovery that rest primarily upon common law, the North Carolina General Statutes provide a mechanism by which wronged insureds can recover for the bad faith committed by their insurers. Working together, the Unfair Claim Settlement Practices Act, codified at N.C.G.S. § 58-63-15(11) (formerly codified at N.C.G.S. § 58-54.4(11)), and the Unfair Trade or Deceptive Practices Act [the UTPA] codified at N.C.G.S. § 75-1.1, *et seq.*, create a private right of action that allows a plaintiff to reference the behaviors outlawed by the Unfair Claim Settlement Practices Act in her claim brought pursuant to the UTPA. To understand how these statues work together, it is helpful to address each statue separately.

First, the Unfair Claim Settlement Practices Act, N.C. Gen. Stat. § 58-63-15 (2009), has 14 subparts which detail practices and acts by insurers that the North Carolina legislature recognizes as constituting unfair claims practices. N.C. Gen. Stat. § 58-63-15 (2009). The factors may also constitute bad faith in North Carolina. *See generally Robinson v. North Carolina Farm Bureau Ins. Co.*, 86 N.C. App. 44, 49-50, 356 S.E.2d 382, 395-96 (N.C. Ct. App. 1987). Of particular note are subsections (f), (h), (m), and (n) which provide:

- (f) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
- (h) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled;
- (m) Failing to promptly settle claims where liability has become reasonably clear;
- (n) Failing to promptly provide a reasonable explanation of the basis in the policy in relation to the facts or law for denial of the claim or for the offer of compromise settlement; *Id.*

However, the Unfair Claim Settlement Practices Act, N.C. Gen. Stat. § 58-63-15 (2009), does not provide for a private right of action; in fact, it specifically provides that "no violation of this subsection shall of itself create any cause of action in favor of any person other than the commissioner." *Id.*

An aggrieved insured, however, is not without recourse because conduct that violates the Unfair Claim Settlement Practices Act also violates the UTPA. *See Gray v. NC Ins. Underwriting Ass'n*, 352 N.C. 61, 71, 529 S.E.2d 676, 683 (2000) (holding "conduct that violates subsection (f) of N.C.G.S. § 58-63-15(11) constitutes a violation of N.C.G.S. § 75-1-1, as a matter of law."); *see also United States Virginia Bank v. Air-Lift Assocs.*, 79 N.C. App. 315, 319020, 339 S.E.2d 90, 93 (1986) ("The purpose of G.S. 75-1.1 is to provide a civil means to maintain ethical standards of dealings between persons engaged in business and the consuming public within [North Carolina] ...."). Therefore, a plaintiff harmed by an insured engaging in actions outlawed by the Unfair Claim Settlement Practices statute may pursue her claim by filing a private right of action alleging violations of the UTPA; however, the allegations must be plead properly. A notable benefit to bringing a bad faith claim under Chapter 75 is

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Impact of Sit-Ins on American Civil Rights Movement Explored at Elon Law Forum

By Philip Craft

Franklin McCain, one of the four NC A&T students who energized the civil rights movement in 1960 by sitting at a segregated lunch counter in Greensboro, NC, was the featured speaker at Elon University School of Law's second annual Martin Luther King Jr. forum on January 14.

Photo courtesy of the International Civil Rights Center & Museum

The forum took place two weeks prior to the 50th anniversary of the sit-ins, which began in Greensboro on February 1, 1960. The importance of the sit-ins in American history is underscored by the fact that 50 years later, to the day, Greensboro celebrated the opening of the International Civil Rights Center and Museum in the exact location where McCain and his three friends, Ezell Blair Jr. (also known as Jibreel Khazan), David Richmond, and Joseph McNeil, initiated the historic sit-ins.

The focus of Elon Law's forum was on the legal and societal hurdles that sit-in participants had to overcome, as well as the historical and legal context of the civil rights movement within which the sit-ins took place.

Historical Context

Duke University historian William H. Chafe began the forum by describing what he called the "progressive mystique of the South, a much more genteel form of social control where the thinking was, 'we should be nice to people but not necessarily change the status quo.'"

"Manners became a substitute for progress, and that is one of the difficulties that people like Franklin McCain faced when they had to find some way to puncture that aura of civility, which was basically a very effective means of keeping things quiet and maintaining social control," Chafe said.

Chafe explained that the sit-ins were preceded by a well-established tradition of protests for equality by African Americans in North Carolina, particularly at colleges and high schools. In a news report about the Elon Law forum, *Carolina Peacemaker* editor Afrique I. Kilimanjaro wrote that Chafe, "cited Bennett College President David D. Jones, who refused to hire construction firms to work on the campus unless the firm had black construction workers; and Dudley High School science teacher Vance Chavis, who told his students that he never sat at the

back of the bus and encouraged them to stand up and be assertive."

Even while acknowledging the contributions of a broad set of individuals in the region for civil rights, Chafe said that the sit-ins were unique in their approach and impact.

"What happened on February 1 was the decisive tipping point which led to so much else happening, including basically the creation of the direct action student civil rights movement, which is responsible for the 1964 Civil Rights Act, the '65 Voting Rights Act, and the '68 Housing Act. All that really had its inception in the direct action started by Franklin McCain and others," Chafe said.

A Personal Account

Franklin McCain then described how he and his friends arrived at the decision to initiate the sit-ins, noting how angry they had become at a system that denied them equal rights.

"We determined that to be decent human beings and to get that respect, we had to demand it, because it represented power in the eyes of a lot of people in the opposition, and we knew full well that the opposition does not give up power, you had to take it," McCain said.

Knowing about the injustices of segregation but doing nothing about it was intolerable, McCain said.

"We concluded that we were probably the worst of the lot," McCain reflected. "We are aware of all these things and we do absolutely nothing? You don't feel good when you take that kind of inventory and make that kind of assessment. I had to find a way to redeem Franklin McCain and find some sense of relief and manhood, and I thought I owed something to the legacy of my parents, my grandparents, and my ancestors."

McCain also explained the group's thought process in choosing the sit-ins as a form of protest.

"We didn't pick the Woolworth's counter just out of a hat," McCain said. "We picked Woolworth's because it represented a real dichotomy of treatment and offerings and service. It was a representation of another big lie, meaning that you could go to a Woolworth's in New York City or Philadelphia, and visit all 44 counters, including the lunch counter. You could come a little farther south, to Greensboro, and do your business at 43 counters and not number 44. And we thought, this is sinister. This is a place where we have a legitimate right and a way to attack it."

Asked if he was afraid as he walked toward the Woolworth's that day, McCain responded, "Hell no, I wasn't afraid. I was too angry to be afraid. Anxiety, yes—one of two things could happen. I knew my days as a student were going to be over. If I were lucky, I would go to jail for a long, long time. If I were not quite so lucky, I could come back to campus in a pine box. But it did not matter, because the way we were living was probably worse than either of those options."

McCain concluded by explaining the rewarding feeling he had in taking action for a just cause.

"Twenty seconds after I sat on that dumb stool, I had the most wonderful feeling. I had a feeling of self-fulfillment. I had a feeling of dignity 100 feet tall. I had a feeling of invincibility. I was somebody through my own accord and through my own action," McCain said.

Elon Law student Samantha Gilman said McCain's account of the sit-ins was inspiring.

"As an undergraduate at Elon, I took a civil rights class, read books about the sit-ins, and visited sit-in locations, but to talk to someone who participated in it was really meaningful," Gilman said. "You can see it in movies and you can read all the books you can, but to hear it first-hand and feel what they were feeling at the moment really makes an impact."

Legal Context

Romallus Murphy, former general counsel for the North Carolina NAACP and past-president of the Guilford County Black Lawyer's Association, reviewed 1950s civil rights litigation preceding the sit-in movement.

Murphy said that legal actions taken by the NAACP under the leadership of Charles Hamilton Houston and Thurgood Marshall began with a strategy Houston called Equalization Theory, and ended, ultimately, in overturning the separate but equal doctrine of *Plessy v. Ferguson.*

"They concluded that *Plessy v. Ferguson* had no basis in law and therefore they should make an attack upon separate but equal. Well, there was a disagreement. There were those who felt that would be a fatal attack, based upon *steri decisis,* the Supreme Court precedent, they should not attack separate but equal head on—they should use *Plessy v. Ferguson* to put the 'equal' along with 'separate' because they really had separate but unequal."

In cases spearheaded by the NAACP, Murphy said, Houston and Marshall won equal pay for teachers and upgraded higher education facilities for minorities all over the south.

"The idea was that it would become too costly to have duplicate equal facilities all over the country, and therefore *Plessy v. Ferguson* would just die on its own, but that did not happen," Murphy said.

Describing the plaintiffs in these cases, Murphy said they deserved more credit for their contributions to civil rights in the United States.

"The plaintiffs were young black males or females who had recently graduated from college," Murphy said. "If you were to sue the state of Texas or the state of Maryland in those days, your name and picture would be in the paper, they would know who your mother and father are, they would know where you live and where they work, and in some cases you may be subjected to economic reprisals."

Elon Law student Jeremy Ray said he valued Murphy's account of cases that laid a foundation for the sit-ins.

"Without hearing from those who were directly involved in the legal actions of the civil rights movement, you don't really get an idea of the true players who actually created the larger change that happened, especially some of the plaintiffs who took these law suits and just wore down the states until equal rights was finally developed," Ray said.

The Future of Civil Rights

Concluding the forum, panelists discussed political and social matters they thought law students and the broader public should address as part of the civil rights legacy in the country.

McCain said he was disappointed to see so many residents in the region "practicing casual citizenship." He urged all residents, and particularly women and minorities, to take advantage of the hard-won right to vote in democratic elections.

Chafe said the nation is at a critical moment in its history, and that citizens should reflect on the philosophy of its founders for inspiration to become more open

CONTINUED ON PAGE 30

Advocates for the Arts: The Mahler and the State Bar

By Susan Friday Lamb

Did you know that the building which now houses the North Carolina State Bar in downtown Raleigh was a bustling department store more than 25 years ago? In 2001, in the midst of renovations, the State Bar decided to enhance the building's large storefront windows, once filled with the latest fashions. These windows facing Fayetteville Street provided an ideal showcase in a prime location.


Rory Parnell (left) and Megg Rader

The renovation architects came up with an intriguing idea. Why not feature a changing display of paintings by different contemporary North Carolina artists? Not only would this provide visual interest to passers-by, it would also promote the state's artists and creative industry.

Pursuing this idea, Alice Neece Mine, assistant executive director of the State Bar, soon turned to Rory Parnell, owner of Raleigh Contemporary Gallery (now The Mahler Fine Art). Parnell agreed to take on the task of selecting one artist's paintings to highlight every three months. Additionally, she would send information about each artist to the *Journal* for a feature article. And thus, a successful partnership was born.

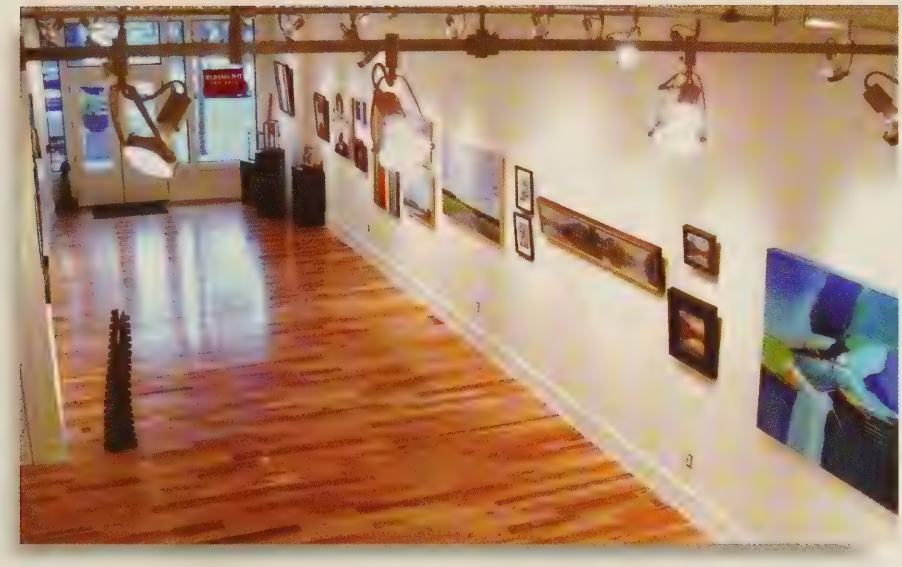
"As an advocate for the arts, I was impressed with the State Bar's commitment to promoting the work of North Carolina artists," recalls Parnell.

When Megg Rader joined Parnell as a professional partner in 2005, she brought her extensive arts experience into the picture. Now both women enjoy working with the State Bar while managing busy careers as owners of the sister galleries The Mahler and The Collectors Gallery, also located on Fayetteville Street.

"The Mahler specializes in fine art in multiple visual disciplines, and The Collectors Gallery focuses exclusively on North Carolina fine craft," says Rader of these thriving businesses.

Although they have 35 years of collective experience in the arts, you may be surprised to discover that Rader and Parnell have many ties to the legal community. For example, Parnell helped found Mediation Services of Wake Inc., after moving to Raleigh with her husband, Dr. Jerry Parnell, in 1981. She and a group of dedicated volunteers began this service because they believed in helping people settle disputes outside the court system with assistance from a trained mediator. Parnell volunteered with the organization for a decade.

"It was a very rewarding experience," states Parnell, who also managed Raleigh Contemporary Gallery at the time. "It was a



way for me to balance my advocacy of art with my interest in social service work."

Rader graduated from Campbell University School of Law in 1987. Prior to law school, she earned a degree in art history and art administration from Mary Baldwin College in Virginia. On a personal note, her husband, Wake County Chief District Court Judge Robert Rader, is a past-chair of the State Bar's CLE Board.

During the 1990s, Rader poured her energy into serving as executive director of Artspace, a non-profit visual art center in the heart of the capital city. She and Parnell continue to serve on numerous boards and committees of non-profit organizations, such as Artspace, the Raleigh Arts Commission, the Visual Art Exchange, and the Conservation Trust of North Carolina. They are also active members of the Downtown Raleigh Alliance.

"We believe that giving back to our community also helps to enrich the cultural life of North Carolina," emphasizes Rader.

Similarly, the State Bar is investing in the state's culture by promoting works by North Carolina artists through its partnership with Rader and Parnell.

"This partnership has really been a win-win for the State Bar, the galleries, and the artists," remarks Mine. "It has worked beautifully." ■

Susan Friday Lamb is a freelance writer.

The Mahler and The Collectors Gallery are distinctive showplaces with unique and diverse offerings. The Mahler opened its doors in 2009 in the carefully restored 1876 Mahler Building. The high ceilings and wooden floors of the historic building provide a pleasing setting for the visual treats within—paintings, sculptures, pottery, mixed media pieces, and more.

"The Mahler offers the best in regional and national fine art by emerging and established artists," says Rader. The gallery's professional staff provides art consulting for residential and corporate clients, which includes numerous Raleigh law firms. For more information, call 919-896-7503, e-mail info@themahlerfineart.com or go to www.themahlerfineart.com.

The Collectors Gallery relocated last fall to a brand-new glass pavilion located at the City Plaza. The gallery features fine craft made by North Carolina artists. Shoppers discover treasures at every turn: unusual and one-of-a-kind pottery, sculpture, jewelry, and glass and wooden objects. Check out the online store at www.thecollectorsgallery.com. Call 919-828-6500 or e-mail info@thecollectorsgallery.com for additional details. ■

Addressing the Gap (cont.)

she worked in health policy and research. Please send comments to Ann Shy at Ann@DisputeRedesign.com

Endnotes

1. While reimbursement recently dropped due to severe constraints to federal and state budgets, both of which are sources of funding for NC Medicaid, rates remain within 95% of Medicare; fee-for-service prevails rather than a managed care model; and physician input remains central to reimbursement and care plan policies.
2. S.L. 2008-118 s.3.13 requires NC Department of Health and Human Services (DHHS) to transfer $2 million to the Office of Administrative Hearings to effectuate a mediation and appeals process.
3. Multiple mediation centers participate. No uniform reporting mechanism exists, hence the estimate.
4. Changes and clarifications were made in the Medicaid appeals process and passed into law as part of S.L. 2009-550/House Bill 274, effective August 28, 2009.
5. In NC, more children are covered by Medicaid (62% of all NC children) than the national average (59.7%), and fewer children are uninsured (18.7% of all NC children) than the national average (19.7%). However, more children in NC are living in poverty (26% of all NC children) than the national average (23%). These data refer to 2007-2008, taken from Medicaid Fact Sheets from the Kaiser Family foundation at http://www.kff.org/MFS/.
6. *See* note 4.
7. According to DHHS' legislative report on the appeal process submitted in October 2009, the new efficiencies (specifically, the expedited hearing process and accompanying document management system) saved $10.3 million in ten months in maintenance of service costs by eliminating 165,200 days of service that would otherwise have been paid for by Medicaid under the previous appeal process. *See* www.dhhs.state.nc.us/dma/legis/100109Appeal.pdf page 4 and Table VI on page 13.
8. Of the decisions adopted by the Medicaid Agency since 2009 as their final agency decision, 89% were ALJ rulings in favor of the Medicaid Agency and 11% were ALJ rulings in favor of the recipient. One hundred percent of the decisions overturned by the Medicaid Agency were ALJ rulings in favor of the recipient. The Medicaid Agency overturned 81% of all cases that favored the recipient. OAH-generated report, updated March 1, 2010.
9. If an existing service was denied, Medicaid would be compelled to continue paying for the service until a final decision was rendered. But if a request for a new service was denied, the child may never receive that service if their Medicaid eligibility expired due to age before a final decision to initiate the service was rendered.
10. State of N.C., Dep't of Health and Human Serv., Div. of Med. Assistance, Appeal Process for Medicaid Applicants and Recipients Established Under S.L. 2008-118, Sec. 3.13 and S.L. 2008-107 Sec. 10.15A (h6), at 5 (2009).
11. Estimates now say an additional 16 million low-income people will be added to Medicaid including parents and some childless adults. "Proposed Changes in the Final Health Care Bill," *The New York Times*, March 22, 2010.

Sit-Ins (cont.)

to the needs and perspectives of minorities in the country.

"By 2050, we will no longer be a majority white nation," Chafe said. "Our own state has seen a 600% increase in the Latino population in the last ten years, and we are facing a cultural test of where our values are. Do we actually believe in the common good and what is the common good? Our country was founded, the white part of the country, by the Puritans who talked about a model of Christian charity, about caring for each other, about loving each other, about bearing each other's pain. We haven't been there for a while, we haven't really understood the importance of hearing the other side."

Asked about current social movements, including the gay rights movement, Chafe concluded saying there was a need to "recognize the indivisibility of human rights."

Elon Law student Tiffany Atkins said the forum sent the right message to law students.

"They each gave a different perspective on the importance of the sit-ins and how the law played a part in a movement that shaped our country," Atkins said. "I thought it was great that they challenged us to be empowered to really make change."

Elon Law student Amanda Tauber said the forum was important in helping law students consider their roles as attorneys.

"It was a great charge to all of us to be active," Tauber said. "We can't sit on our hands and wait for change to happen. As lawyers, we will have the influence, the intelligence, and the creativity to really make an active change in our communities and in the world."

Elon Law presented the forum in partnership with the law school's Black Law Students Association and Phi Alpha Delta chapter, and with support from the Law School Admission Council as part of DiscoverLaw.org Month. The Admissions Office at Elon Law sponsored this forum, inviting college and high school students from minority communities currently underrepresented in the legal profession to attend, providing an opportunity to consider what careers in the law can achieve. ■

Philip Craft is the director of communications for Elon University School of Law.

Bad Faith (cont.)

that a successful plaintiff may seek both treble damages and attorney's fees. *See generally* N.C.G.S. Chapter 75-16, *et. seq.*; *see also Marchall v. Miller*, 302 N.C. 539, 548, 276 S.E.2d 397, 403 (1981).

To succeed in a claim for unfair or deceptive trade practices under the UTPA, a plaintiff generally must show: "(1) defendants committed an unfair or deceptive act or practice; (2) in or affecting commerce; and (3) that plaintiff was injured thereby." *First Atl. Mgmt. Corp. v. Dunlea Realty Co.*, 131 N.C. App. 242, 252, 507 S.E.2d 56, 63 (1998). *See also* N.C. Gen. Stat. § 75-1.1 (2005). "A practice is unfair when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers." *Marshall v. Miller*, 302 N.C. 539, 548, 276 S.E.2d 397, 403 (1981). Interpreting the Unfair Claim Settlement Practices statute, North Carolina courts have held that "[n]ot attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonable clear," is "inherently unfair, unscrupulous, and injurious to consumers." *Country Club of Johnston City., Inc. v. US Fidelity & Guar. Co.*, 150 N.C. App 231, 247, 563 S.E.2d 269, 280 (2002) (quoting N.C. Gen. Stat. § 58-63-15(11)(f) (2005)). Therefore, a plaintiff alleging bad faith should allege the insurer's actions violate the Unfair Claim Settlement Practices Act and therefore constitute an unfair trade practice, which the UTPA creates a private right of action to pursue.

A final distinction worthy of note is that causes of action for unfair or deceptive practices are distinct from breach of contract actions. *Boyd v. Drum*, 129 N.C. App. 586, 593, 501 S.E.2d 91, 97 (1998), *aff'd per curiam*, 350 N.C. 90, 511 S.E.2d 304 (1999). The cause of action for violation of the statute exists independently of whether the contract was breached. *Bernard v. Cen. Carolina Truck Sales, Inc.*, 68 N.C. 228, 230, 314 S.E.2d 582, 584 (Ct. App. 1984), *disc. review den'd*, 311 N.C. 751, 321 S.E.2d 126 (1984). However, damages may be recovered either for the breach of contract claim, or for the violation of §75-1.1, but not for both. *United Laboratories, Inc. v. Kuykendall*, 437 S.E.2d 374, 379, 335 N.C. 183 (N.C. 1993). *See also, Vasquez v. Allstate Ins. Co.*, 529 S.E.2d 480, 137 N.C.App.741 (N.C.App. 2000).

Conclusion

Bad faith litigation continues to grow and expand and courts are faced with the question of defining what constitutes an insurer's obligation to act in good faith, or to not act in bad faith. While all courts are agreed that an insurer owes some duty in this respect, courts wrestle with what constitutes that duty, or a breach thereof. State legislatures have circumscribed those duties to some extent but questions remain. As the concept evolves, it is important to understand ways in which bad faith will be characterized and delineated. It is also important for practitioners on both sides to recognize the potential areas that create the greatest risk of a bad faith claim, and what steps can be taken to address those areas before the claim arises. Exploring these matters in detail will hopefully provide practitioners tools to assist them as they navigate this evolving area of law. ■

A graduate of the University of North Carolina School of Law, Constance Anastopoulo is an assistant professor of law at the Charleston School of Law. In addition to teaching Insurance and Torts, Professor Anastopoulo enjoys her role as a consultant in litigation involving novel and complex issues related to the obligation of insurers.

North Carolina Lawyers and Professionalism

By Melvin F. Wright Jr.

Mark Twain, Abraham Lincoln, and Learned Hand have never appeared at any of North Carolina's professionalism CLEs; however, equally fine humorists, public servants, and legal philosophers have. Over the last 12 years in North Carolina you have had the opportunity to hear the humor of Lawson Newton, the poetry of former Chief Justice Henry Frye, and the legal philosophies of Tom Lunsford, Janet Ward Black, and Buddy Wester, to name but a few. The North Carolina Chief Justice's Commission on Professionalism (CJCP) is now 12 years old, and during that time I have had the pleasure and privilege of hearing many wonderful professionalism presentations. Below are some of the most memorable nuggets throughout the years, as I recall them.

1. To all new lawyers - find a mentor! The law gets more specialized and complex with the addition of each new generation of lawyers. In our present economy, more and more new lawyers are opening their own offices with little or no experience. The first time they engage in any form of legal work, it can be overwhelming. What to an older, more experienced lawyer may seem elementary, to a new lawyer may be complex and confusing. If there is a new lawyer in your town, introduce yourself and offer to help as a mentor. Ellen Gregg and Heather Mallard, in explaining the popular book entitled "When Generations Collide" by Lynne C. Lancaster and David Stillman, have told us there are now four different generations of lawyers in the workplace. Work hard to understand the differences in generations and cultivate those differences to make us stronger as a profession. Start by sharing lunch and a good war story; it will make you feel better about what we do.

2. Always remember the importance of a handshake! Criminal defense attorney Eben Rawls and prosecutor Barry Cook were involved in a very inflammatory case involving the kidnapping and rape of a young lady, taken from her church on Easter morning and left for dead in a wooded area. After much pretrial publicity and great emotion, the lawyers agreed to try the case as professionally as they could with an agreement to treat everyone involved civilly. When the case was called, the prosecuting witness and her family came forward with embarrassment and hatred in their eyes for the defendant and his attorney. Barry Cook followed them in, but instead of just heading to the prosecution table, he walked over and shook Eben Rawl's hand. This sent a strong message to all watching that capable lawyers would be acting as honorable and zealous advocates—seeking justice. A handshake at the end of a legal matter reaffirms the important message that we can disagree without being disagreeable.

3. Former Chief Justice Burley Mitchell, who created the CJCP with the assistance of Bill King and Jerry Parnell, admonishes lawyers to learn, review, and adhere to the Rules of Professional Responsibility. Even though our citizenry does not want to "rat" on anyone or get involved in "other people's business," our Rules sometimes require that we do so. Chief Justice Mitchell cautions that if we are to continue to be a self-regulating profession, there are certain requirements that apply to each of us. If we are not willing to follow the mandates of Rule 8.3, *Reporting Professional Misconduct*, there are other organizations willing to take over that obligation.

4. "Don't Drink Coffee with Your Client" is a well-known presentation by Roger Smith, which discusses the relationship between a lawyer and his or her client. If you get the chance, do not pass up the opportunity to hear this outstanding presentation, which highlights many aspects of professionalism. My interpretation of this speech is that we need to establish a professional relationship with our clients (Rule 1.2 of the Rules of Professional Conduct), and if that relationship becomes more of a friendship, it becomes harder to act as the lawyer.

5. Avoid seeking a default judgment or asking for sanctions against another lawyer if you can do so without prejudicing your client. Do what Ed Gaskins and other outstanding lawyers do: before filing motions that may adversely affect another lawyer's practice or reputation, invite that lawyer to lunch or dinner to discuss the matter in person and try to resolve it without the assistance of the court.

6. Jim Ferguson believes in the importance of treating all litigants with respect. He tells of a case in which the criminal defendant's mother testified as his alibi witness and stated that the defendant was at home with her when there were several eye witnesses who saw the defendant leaving the scene of the crime with stolen items. In the first trial, the prosecutor abused the mother for a long period of time on cross-examination and so inflamed several jurors that they stated, upon entering the jury room for deliberations, "Can you believe how that DA treated the defendant's mother?" The offended jurors would not vote for conviction even though it was clear that the defendant was guilty. After the mistrial, the prosecutor took a different approach in the second trial. The evidence for both sides was the same, but on cross examination of the mother, the DA simply asked, "Madam, the defendant is your only son, is he not?" She answered yes. "You love your son, don't you?" She answered yes. "And you do not want him to go to prison, do you?" She answered no. "Thank you. No further questions." When the jurors retired to the jury room this time, they started out by saying, "Can you believe the mother would lie for that boy like she did?" The jury returned a guilty verdict in about three minutes. Treat everyone in the legal system with respect.

7. Don't always assume that your adversary is doing fine. If the opposing attorney is not acting like he or she normally does, there may be a problem. Tom White of Kinston tells a powerful story of an act of professionalism

CONTINUED ON PAGE 55

IOLTA Faces Difficult Economic Times

Income

All information on IOLTA income earned in 2009 has now been received and recorded. After achieving record income in 2008 (surpassing $5 million for the first time) fueled by moving to a mandatory program, we saw an unprecedented downturn in income in 2009—a 55% decrease over the previous year. Total income was under $2.4 million. The income decreases result from the economic downturn, which has seen unprecedented low interest rates being paid on lower principal balances in the accounts.

Grants

At the December grant-making meeting, the trustees considered predictions that interest rates will not increase before late 2010, which means that income will remain depressed. They determined that they would need significant funds from the NC IOLTA reserve fund to make both 2010 and 2011 grants. Therefore, they decided that they could take $1 million (approximately 37%) from the reserve fund and made just over $3 million in 2010 grants (compared to $4.1 million in 2009).

Grants to legal aid organizations were decreased by approximately 20%. No grants were made to new organizations or for new programs, and 2010 grants were not made to a number of organizations that have received funds in the past for administration of justice programs, including the summer internships to the law schools. Hopefully, increased income in the future will allow for those grants in future years.

State Funds

During calendar year 2009, in addition to its own funds, NC IOLTA administered just under $5.8 million in state funding for legal aid on behalf of the NC State Bar, compared to $6.4 million in 2008. The Equal Access to Justice Commission, the NCBA, and the Equal Justice Alliance continue to work to restore and increase legal aid funding to meet the increased need for legal aid during the economic downturn.

Celebrating our History

After publishing a three-article series for IOLTA's 25th anniversary in the NC State Bar *Journal*, a shorter article focusing on our relationship with the banks and the purpose of the grants was included in the NC Bankers Association publication. Short articles featuring IOLTA's grants to local organizations have now appeared in publications for local bar publications in Buncombe, Mecklenburg, Wake, Durham, Guilford, and Forsyth counties. We would be happy to provide articles for additional locales where there are bar publications.

Comparability

On January 28, 2010, the NC Supreme Court approved revisions to the NC IOLTA rules that require lawyers to hold their IOLTA accounts only at "eligible" banks—those banks that agree to pay IOLTA accounts the highest rate available to that bank's other customers when the IOLTA accounts meet the same minimum balance or other account qualifications (known as "comparability"). ***The revised rule has an effective date of July 1, 2010, after which lawyers may keep NC IOLTA accounts only in banks certified as eligible by NC IOLTA.***

Lawyers do not need to do anything in response to this rule change at this time. NC IOLTA is working with currently participating banks to implement the requirement and ensure compliance. Banks will be certified as "eligible" by NC IOLTA upon a finding that they are in compliance with the rule based on the documentation they submit to the program. Beginning in mid-May, NC IOLTA will maintain a list of eligible banks on its website (www.nciolta.org/iolta_banklist.asp).

Banks that go above and beyond the eligibility requirements of the revised rule to support the NC IOLTA program in its mission to ensure that low-income North Carolinians have access to critically needed legal aid will be specially recognized on the Eligible Bank List as **NC IOLTA's Prime Partner Banks**. The required interest rate for Prime Partner Banks is a net yield of 75% of the federal funds target rate with a minimum rate of 0.75%.

More information about comparability requirements and the Prime Partner program are available on the NC State Bar website: www.ncbar.com/programs/iolta.asp.

FDIC Coverage

The Transaction Account Guarantee Program, under which IOLTA accounts are covered by FDIC regardless of the amount of funds held in the account, is being extended through December 31, 2010 with an option to extend through December 31, 2011. Banks may choose to opt out of the program. Banks opting out must post that information prominently and will be listed on the FDIC website. ■

IOLTA Launches Its Own Website

NC IOLTA has launched a website of its own at **www.nciolta.org**.

A Kinder, Gentler Bar—Take Two

By Suzanne Lever

In the Summer 2009 *Journal*, I wrote an article discussing a proposed amendment to Rule 1.8(e) then under consideration by the Ethics Committee. Rule 1.8(e) prohibits a lawyer from making or guaranteeing a loan to a client for living expenses. The impetus for the proposed amendment was regular calls to State Bar Ethics Counsel from lawyers seeking to assist clients who have become unable to provide for themselves or their families after a serious accident. The proposed amendment provided that a lawyer representing an indigent client could provide financial assistance for essential needs such as food, housing, and utilities, as long as there was no obligation to repay and there was no representation to the client prior to the legal representation that such financial assistance would be provided.

Lawyers were opposed to the proposed amendment on the ground that approval of the amendment would result in an unfair advantage to large firms with deep pockets. The fear was that clients would learn which law firms had a reputation for providing financial assistance to their clients and would select their lawyer based on that factor. The proposed amendment was not adopted.

The Ethics Committee is now considering an inquiry from a personal injury lawyer as to the feasibility of setting up a not-for-profit organization to assist needy clients. The inquiring lawyer states that the idea for the organization arose from his desire to help clients deal with the financial and emotional consequences of catastrophic injuries. The lawyer describes his proposed organization as similar to the North Carolina Crime Victim's Compensation Fund, but with the aim of assisting personal injury victims.

The proposed organization would accept tax-deductible donations and would be available to provide funding, housing assistance, and food to personal injury clients in need. Applications for assistance would be reviewed by the organization's review committee and assistance would be provided to those persons considered to be most worthy of need. The review committee would be made up of volunteer lawyers. Any law firm could submit applications for assistance for their clients.

Seems like a great idea. What could be wrong with something that makes you feel so warm and fuzzy? But wait, what if, just what if, some lawyers attempt to use the organization for personal gain rather than for the greater good? How can such an organization function without becoming a conduit for a lawyer's funds that are earmarked and disbursed to the lawyer's own client? And, what will prevent firms participating in the organization from gaining an unfair advantage in attracting clients?

The inquiring lawyer has recommended certain safeguards aimed to prevent such shenanigans. Safeguards suggested thus far include the requirement that application review be "blind" as to the amount of contributions made to the organization by a particular lawyer or firm. Lawyers serving on the review board would also not be allowed to participate in reviewing applications when they have a conflict of interest. In addition, lawyers would not be allowed to advertise their service on the organization's review board, their contributions to the organization, or their past successes in obtaining financial assistance for their clients from the organization.

What do you think? Would an organization established by lawyers to provide financial assistance to needy clients provide a solution to the current ethical/moral conundrum? Or is the State Bar being tempted by a wolf in sheep's clothing? The ethics inquiry will be discussed at the next quarterly meeting of the Ethics Committee. If you would like to comment on the ethical issues surrounding the establishment of a not-for-profit organization to assist needy clients, please send your written comments to Suzanne Lever, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611, slever@ ncbar.gov. ■

Suzanne Lever is assistant ethics counsel for the North Carolina State Bar.

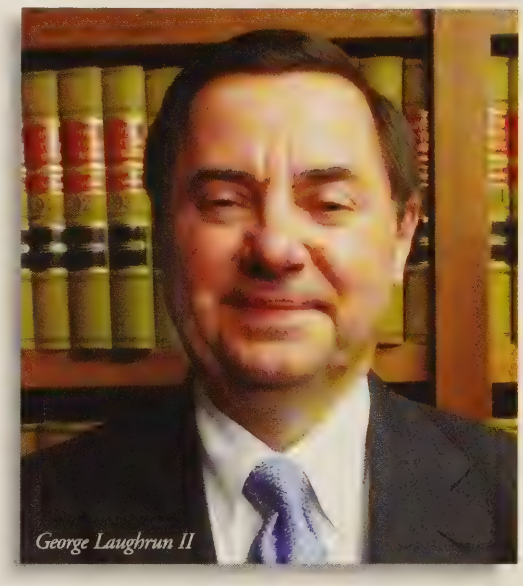
Animal Law (cont.)

19. E.g., Burke. *See* the Morganton News Herald, Jan 28, 2010 (2010 WLNR 1860747), discussing a 2010 amendment to a county ordinance attempting to classify feral cats as wild animals to the end that they can be immediately euthanized upon arrival at the shelter.
20. *Justice for Animals v. Lenoir County SPCA, Inc.*, 607 S.E.2d 317 (N.C. App. 2005).
21. *Id.* at 324.
22. 2009 N.C. Stats ch. 327, § 1.
23. N.C. Gen. Stat. § 130A-192(c).
24. It was enacted partly in response to reports that Orange County incurred in one year $90,000 at its shelter caring for 45 pit bulls that were evidence in a pending felony dog-fighting prosecution [Chapel Hill Herald, July 6, 1999, at p 1] and that Durham County's shelter spent over $40,000 in 13 months caring for 12 pit bulls that were evidence in a pending criminal prosecution [The *News & Observer*, Jan. 31, 2002, p A1 (Durham edition)].
25. N.C. Gen. Stat. § 19A-23.
26. 2 N.C. Admin Code 52J.0101 *et seq.*
27. 2 N.C. Admin Code 52J.0210.
28. 2 N.C. Admin Code 52J.0201 *et seq.* For example, a home with carpet or furniture cannot comply with the requirement under 52J.0201 that any interior surface with which animals come into contact shall be impervious to moisture.
29. 2 N.C. Admin Code 52J.0404 *et seq.*
30. *State v. Maynard*, 673 S.E.2d 877 (N.C. App. 2009).
31. *Holcomb v. Colonial Associates*, 597 S.E.2d 710 (N.C. 2004).
32. Based upon rankings by the Animal Legal Defense Fund. www.aldf.org/article.php?id=1142

Profiles in Specialization—George Laughrun II

An Interview by Denise Mullen, Assistant Director of Legal Specialization

I recently had an opportunity to talk with George Laughrun II, a board certified specialist practicing in Charlotte. George received his law degree from the Cumberland School of Law in Birmingham, Alabama. Following graduation, he served as an assistant district attorney in Charlotte for two years before moving into private practice. George focused his practice on criminal defense work, becoming a board certified specialist in state and federal criminal law in 1991. George was among the first in the state to achieve that distinction. He now practices at Goodman, Carr, Laughrun, Levine, Murray and Green, PA, in Charlotte. Following are some of his comments about the specialization program and the impact it has had on his career.


George Laughrun II

Q: Why did you pursue certification?

I wanted to be able to show clients that I was committed to this practice area. It was also nice to be able to add the certification to my letterhead. I took the exam in 1991, the first year that the specialty certification was offered. I was in a group of about six or seven lawyers that got together regularly to discuss cases and we all took the exam together. It was a daunting task at the time and we were all glad to have received passing scores!

Q: How did you prepare for the examination?

I read Chapter 15A, the criminal procedure act, as well as Chapter 14, the crime section in the General Statutes. I studied with the group I mentioned earlier and we really tried to figure out what knowledge sets apart a criminal law specialist from someone who handles these cases only occasionally. We knew that the exam wasn't designed to trick us, but we were looking for the less obvious details that really show a depth of knowledge.

Q: Was the certification process valuable to you in any way?

The process was valuable in that I truly didn't realize how many jury trials I had under my belt until I had to compile that information for the application. Now I keep a running list so that the information is easy to access for the recertification applications that are due every five years. The exam itself, in 1991, felt very much like the 1980 bar exam to me—it was even held in the same location at that time.

Q: How has certification been helpful to your practice?

As a criminal law specialist who handles a large percentage of DWI cases, I have chosen not to advertise through mailings or phone book listings. My firm does have a website and my letterhead highlights my board certification. I consider the certification to be a subtle form of advertising that helps generate clients at a pretty consistent rate. Clients know that this is my practice area—I'm not drafting wills or performing real estate closings, I am handling challenging criminal cases on a daily basis. The certification makes that easier for clients and potential clients to understand.

Q: What do your clients say about your certification?

Some clients will ask, early on, how much experience I have and I'm able to show them my original specialty certificate, framed and hanging on the wall. I explain that I applied for and received this designation that only about five percent of lawyers have.

Q: How does your certification benefit your clients?

The certification requirements ensure that I keep up-to-date on changes in criminal law. As a specialist, I have to get my continuing legal education (CLE) credits in criminal law courses. I don't take CLE courses just to get a trip to the beach—I take courses that are relevant to my practice and I use that knowledge to benefit my practice as well as my clients.

Q: Is certification important in your practice area?

It is. There are a lot of good lawyers who are not certified, but I think that achieving the designation sends a message to clients, judges, and other lawyers that you are serious about your work and about maintaining strong qualifications. I think it's similar to receiving the "Good Housekeeping Seal of Approval." The North Carolina State Bar has given that stamp of approval to your work and that's something that the public can count on.

My daughter took the bar exam last year and while she was studying I took a few of her practice exams and didn't do well! That's ok, I know I'm not a jack-of-all-trades at this point. I have narrowed my focus and that increases the depth of my knowledge and reduces the chance for mistakes.

Q: How does specialization benefit the public?

Specialization helps the public by identifying lawyers who have met multiple criteria, including work experience, a practice-specific examination, and a review by their peers as well as by the elite group of specialists who make up the committees. In order to receive and maintain board certification, the lawyer must also have high ethical standards and avoid disciplinary problems with the Bar. Providing that information to the public is very helpful.

Q: How do you see the future of specialization?

I already use the Directory of Board Certified Legal Specialists to find other specialists when I need to refer cases, particularly in very complicated situations that involve other practice areas like immigration. It is very hard to be a general practitioner these days. I could envision a future where virtually every practice area has specialists. I think currently employment law and intellectual property law are two very specialized areas that might be appropriate for board certification. ■

For more information on the State Bar's specialization program, please visit us on the web at www.nclawspecialists.gov.

Specialization Awards Presented

The Board of Legal Specialization held its annual luncheon on Friday, April 16, 2010. Newly-certified specialists were recognized and the following awards were presented.

The **James E. Cross Jr. Leadership Award** is presented to a certified specialist who has taken an active leadership role in his/her practice area through presentations at CLE seminars, scholarly writings, participation in groundbreaking cases, or service to an established professional organization. This year, the award was presented to **Charles T. Hall** of Raleigh. Charles became a board certified specialist in social security disability law in 2006 after serving as the chair of the committee that launched that new specialty area. Charles is a well-noted expert in his practice area, having written a much-respected one volume treatise on the practice of social security disability law. Charles maintains a social security news blog which is known nationwide as a daily "must-read" for developments in the world of social security administration in general, and the practice of social security disability law in particular. Charles undertakes these projects with one intention: to make his colleagues better at representing the disabled, and for that he is particularly deserving of this award.

The **Howard L. Gum Service Award** recognizes a specialty committee member who consistently excels in completing committee tasks. The eight specialty committees are the lifeblood of the specialization program. They are responsible for evaluating every application for certification, including peer references, and writing and grading the examinations. The recipient of the Howard Gum award is highly dedicated to legal specialization, donates his/her time to committee responsibilities, and responds to the needs of the State Bar staff and the board in exemplary fashion. **Kate Mewhinney** of Winston-Salem is this year's recipient. Kate first became a board certified specialist in elder law in 1995 through the National Elder Law Foundation; since that time she has been a leader in elder law in North Carolina. She is known statewide as the director of the Elder Law Clinic at Wake Forest School of Law. Kate spearheaded the effort to create a North Carolina specialty in elder law. That goal was fully realized this past year as the first group of elder law specialists was certified in November. Kate is one of those rare people who has the gift of making hard work look easy. She led the way cleanly and efficiently through the morass of national and state specialization rules to a sensible, timely, and successful result. Her graceful persistence made board certification of elder law specialists in North Carolina a reality.

The **Sara H. Davis Excellence Award** is presented to a certified specialist who exemplifies excellence in his/her daily work as a lawyer and serves as a model for other lawyers. Special consideration is given for a long and consistent record of handling challenging matters successfully; for sharing knowledge and experience with other lawyers; for earning the respect and admiration of those with whom the lawyer comes into contact in his daily work; and for high ethical standards. At the April luncheon, the award was presented to **W. Timothy Haithcock** of Goldsboro. Tim became a board certified specialist in workers' compensation law in 2000. He is well-known by his partners, colleagues, and adversaries as a lawyer with tremendous skill and the highest of ethical standards. It is not unusual for Tim to take a case that others have turned down; he does so frequently when he sees an injured worker in need. He also regularly assists other lawyers handling complex cases both by providing advice and also by joining as associate counsel. Tim is exceptionally trustworthy both personally and professionally, and the consummate professional as well as husband and father. His partners share that he reminds them by words and deeds daily that honesty, hard work, generosity and ability—in that order—are hallmarks of a professional lawyer.

Congratulations award winners! ■

Photosynthesis of the Spirit

By Don Carroll

Recently I was at a conference looking at issues of cognitive impairment, dementia, and Alzheimer's. A colleague mentioned the case of a very successful lawyer who at the age of 65, upon being diagnosed with the onset of Alzheimer's, went out into the backyard, put a pistol to his head, and killed himself.

For years I have worked with individuals with the progressive fatal disease of alcoholism. This disease not only affects all aspects of a person's physical, emotional, and spiritual life, but as a brain disease it affects how the alcoholic is affected by the disease. We see this in what happened to Ernest Hemingway. He had just left the hospital for treatment for his alcoholism when he killed himself. He is a well-known, but not isolated, example of the hopelessness that this illness can cause.

Coming to grips with the reality of a progressive and fatal illness can be despairing, particularly when the part of the brain that gives us our outlook on life is affected by the illness and makes what is already a dark outlook seem even darker. So in the process of helping individuals with alcoholism, while it is extremely important to be able to bring them clear information about their progressive illness, it is just as important to bring them hope that recovery is possible. Indeed, over the years it is often the message of hope, rather than any of the factual psychological and medical information about how to cope with the disease, that makes all the difference. One of the reasons that Alcoholics Anonymous has been so successful is that it helps provide hope to individuals whose brain chemistry is so impoverished by illness that everything seems hopeless.

What my friend's story of the man who committed suicide out of fear of Alzheimer's told me is that in helping people with cognitive impairments, we have not yet provided them with a model that provides hope. We have provided them with a model about how to get early diagnosis, about the availability of drugs which slow the disease's progression, and other practical information about how to live in a world with cognitive impairment. However, we have not given hope, and hope may be the most important element.

The statistics tell us that an increasingly significant number of us will have some form of cognitive impairment. Given the data that shows the longer we live the greater the certainty we will have some kind of cognitive impairment, the question becomes where do we find hope in aging? Maybe we find hope in the same place as have those folks who have a progressive, fatal illness like alcoholism.

Hope comes from the realization that it is possible, at any age, to have a new perspective on life that is grounded not in isolation, but in connection. The more we are caught within the suffering of our own understanding of our story, the more isolated we become.

Hope comes when we are freed from the burden of self. It is through our spiritual nature that we learn how to be free of the burden of self. The ability to be connected to something outside of, and greater than, the self is how we might define spirituality. Another primary characteristic of being spiritually grounded is that one lives in the present. The man who killed himself at age 65 upon getting his Alzheimer's diagnosis was in fear of the future. From the ability to fully access living in the present, there is no fear of the future, where cognitive deterioration may or may not be.

Talking about cognitive impairment—or Alzheimer's—today is much like, in the old days, talking about cancer or mental illness. The fear was so great back then, people were unable to talk about these diseases. One way to reduce a fear so great that it causes suicide is through being able to talk openly about the hope and joy that comes through living a more spiritually oriented—or connected—life.

Disease or no disease, the process of living life after age 60 is one where living a more spiritually oriented or connected life is one that in many cultures comes naturally. Unfortunately, that is not true in our culture. But in many cultures death is seen as a part of the sequence of life and not something to be feared. The wisdom of these cultures is that death is feared only when we have not lived our most authentic life in a way in which we are deeply and richly connected to others.

Sometimes the harsh reality of a serious illness is simply the wake-up call that we need to allow ourselves to find our own authentic being. If we have lived an authentic, connected life, then it is likely that we have also experienced the paradoxical nature of life, that it is both material and non-material. Once we have seen beyond the material world, if only for a brief time, then we have a perspective that our life, even our death, is not limited by our physical, material, or cognitive condition.

But the question remains—how do we get to a perspective of hope in our life in light of the fact that many of us in our last years will experience some kind of cognitive impairment? It is the same way we get to the perspective of hope during any period of our life that seems dark, dead-ended, or hopeless. We get there through a process that I will call spiritual photosynthesis.

Photosynthesis is a process that converts carbon dioxide into organic compounds, especially sugars, using the energy from sunlight. It is a vital process for life on earth. Spiritual photosynthesis is a vital process for living a fully engaged and hopeful life. The process of photosynthesis occurs when energy from light is absorbed by proteins that contain chlorophyll.

In spiritual photosynthesis we are converting energy from an outside source, such as our connections with others, into the neuro-chemical reactions in our brains which provide hope. For all of us, we must find the outside energy to convert—what is the sun that lights your life? And we must have the kind of chlorophyll that will convert this into the energy of hope and joy. I don't want to over stretch the photosynthesis analogy by making it seem

like there is only one way, one spiritual tradition, to find hope and joy in life. That is certainly not true. In fact, there is more than one way that photosynthesis occurs. But the basic idea in the analogy is that we must get energy from outside of ourselves.

The more authentic and deep the connections are, the more the potential source of life-giving energy. Hope is found in being a part of this dynamic. We get energy from outside of ourselves, from our connection to people we care about, from our connection to nature, and from a connection to God (for those who hold this belief). If we just receive this energy we do not live in hope and joy. We must convert it to "sugar" and send it back out. If we allow our connectedness to touch us authentically, it is transformed into a sweetness that we send back out into the world.

The name we have for this sweet energy is love. When we take in the sunlight of connection we must be both transformed by it and in turn transform it into love. Our ability to photosynthesize our relations into love and create hope depends upon our perspective. If we are stuck in a dualistic viewpoint, it is difficult to understand what is meant by the idea that we could enjoy our lives even if we were cognitively impaired. This may be particularly true for us as lawyers who have worked all our lives relying on our cognitive abilities. From a dualistic viewpoint, it is just me and my cognitive illness. In this frame there is no hope. But photosynthesis includes three ideas in one: sunlight, chlorophyll, and the process between them which creates something new. You can think of it this way: three things, all different, all one. This makes no sense from a dualistic viewpoint, but from a non-dual perspective it makes perfect sense.

In the scientific realm it is similar to the idea that light is both a wave and a particle, and which it is depends upon where the observer is. It is in the relationship to the reality of light that two things become a third, and at the same time they are one: a ray, a particle, the relation between them to the observer. All three are different yet they are experienced as one thing, the experience of light.

How then in practical terms do we practice photosynthesis of the spirit? We do it by the process of bringing two things together in a relationship so that those two things create something new. Here are some examples. You could participate in a Bar program and tutor an underprivileged child at a local school. You, the child, and the relationship between you that develops—the experience of all three in one is where photosynthesis of the spirit happens. You could work in your local church's soup kitchen. In your showing up to help those less fortunate you learn something special about who you are. You develop a relationship—you, the homeless person, and the relationship you have.

The possibility of photosynthesis of the spirit is created. This is how the Franciscan Father Richard Rohr puts it:

> For all of us this at least means turning to people who are different from us. This is the only thing that can liberate us from our egocentric attitude. Maybe it means that as younger men and women we go to the elderly, or maybe as healthy persons we go to the physically or mentally handicapped, or if we're homophobic we work with a gay person with AIDS. But we all have to move out into a world in which we're not the reference point, and where the others whom we meet are not just an expanded version of ourselves.

(Adapted from *Simplicity*, p. 154-155)

Whether you believe you are a descendent of Adam and Eve a few thousand years ago, or evolved from a single cell millions of years ago, the result is the same—we are all connected, we all share the same DNA. When we open ourselves up to connect to our shared heritage, the sunlight of the spirit comes in. Our chlorophyll is our ability to let go, to be present in this dynamic of life.

It is through the process of spiritual photosynthesis by which the ordinary mundane things we do each day in life are turned into equanimity, kindness, and joy. A concern about cognitive impairment can be exactly the same kind of stimulus that the alcoholic has when he reaches bottom—a sudden clarity in thinking where we realize a shift in perspective on life, where a perspective of living in the throes of a harsh and difficult illness shifts into seeing life with infinite gratitude as a wonderful journey of discovery and love.

Illness or fear of the unknown often causes us to contract in defense. Hope comes when we do just the opposite. Hope comes when we open ourselves up to our connections with others and the mystery of life. Just as fear is always about what might or might not happen in the future, hope and joy are only experienced in the present. Spiritual photosynthesis only happens in the present. Only in the present are we able to breathe in the love and light that are available to us and allow ourselves to be transformed so that we can send love and light out to others. This spiritual process does not require any particular intellectual capacity. In fact, it is often our intellectual analysis, our reasoning about things, our worrying about things which are the biggest barrier to spiritual photosynthesis. It is our worrying mind that blocks our chlorophyll, our letting go.

Despite all the problems we have on this earth of global warming, AIDS epidemics in Africa, and international terrorism, the sun keeps shining on all of us day after day. Photosynthesis keeps going on regardless. Spiritual photosynthesis is equally available. All we need to do is the same thing that any green leaf does, and that is open up to the world, let go of all our thoughts and convictions about how things should be, and allow the flow of our connections to occur.

Some time ago I wrote an article in this column which talked about the importance, upon retirement, of having a well-diversified social portfolio. The concept in the article was, that like having a well-diversified financial portfolio, we need at retirement to have a diversified way to participate in life whether we remain physically active or become wheelchair bound or if in some other way the avenue of the patterns of our participation in life is blocked by our physical or emotional health. The reason that having this portfolio in place prior to retirement is important is that studies show that the chances of creating that portfolio after retirement is rare.

Having been exposed to the research on mild cognitive impairment, dementia, and Alzheimer's, I realize that the overall retirement idea of financial portfolio and social portfolio needs to be expanded to include a spiritual portfolio as essential to a healthy retirement. Again, what you have now is what you will have then. If you don't create and live in a reality of social, emotional, and spiritual health as a part of your life now, then chances are very slim that you will be able to create it when you most need it in retirement. ■

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers which helps lawyers address problems of stress, depression, addiction, or other problems that may lead to impairing a lawyer's ability to practice. For more information, go to www.nclap.org or call toll-free: Don Carroll (1-800-720-7257), Towanda Garner (1-877-570-0991), or Ed Ward (1-877-627-3743).

Bruno's Top Tips for Tip Top Trust Accounting

By Bruno DeMolli

Comparability and Your Trust Account

At its meeting on January 15, 2010, the State Bar Council voted to adopt rule amendments that will make the North Carolina IOLTA (Interest on Lawyers' Trust Accounts) program a "comparable" one. This change could result in substantially increased income for the NC IOLTA program and, thus, for the grants the IOLTA trustees annually make to programs concerned with the improvement of the administration of justice. The rule amendments were approved by the North Carolina Supreme Court on January 28, 2010. The comparability requirement will go into effect on July 1, 2010. Lawyers need to understand the comparability requirement so that they can ensure that their IOLTA trust accounts are in compliance.

What Is Comparability?

Under comparability, lawyers will be required to maintain their IOLTA trust account at an "eligible bank." An eligible bank is one that agrees to pay on the IOLTA account the highest rate available to the bank's other customers when the IOLTA account meets the same minimum balance or other account qualifications. It is a bit like "most favored nation" status for international trade negotiations: the bank cannot treat an IOLTA account any less favorably than it treats the most favored interest-earning accounts at the bank. If the bank declines, a lawyer may not establish an IOLTA trust account at the bank. The proposed comparability rule does not regulate the conduct of the bank—a bank may choose to offer a comparable rate or it may not. Just like the decisions on whether to accommodate the record keeping requirements for lawyers' trust accounts or to participate in IOLTA, the decision on whether to offer comparable rates on IOLTA trust accounts will remain a voluntary one for each bank.

Note that the comparability rule does not involve the setting of rates for banks or require that rates be compared between or among banks. Rates will continue to be set by each bank for its own customers based on the factors the bank normally considers when setting rates. Note further that the NC IOLTA program will also pay to the bank any resulting fees attached to the higher rate product.

How Will Comparability Be Implemented with Banks?

The NC IOLTA program will educate bankers, assist with implementation at each affected bank, and will monitor compliance. Approximately 75% of North Carolina IOLTA trust accounts are currently held in seven multi-state banks. The banks with branches in states that already require comparability will be familiar with the concept and the requirements. Hopefully, these banks, and their North Carolina branch managers, will have a shorter learning curve. Banks that do not maintain accounts with high balances (generally, the only accounts that are affected) or do not offer higher rates to any customers will not be affected by the change to comparability.

How Will Comparability Affect You and Your IOLTA Trust Accounts?

As of July 1, 2010, the comparability rule will require lawyers to establish their IOLTA trust accounts at "eligible banks" that agree to provide comparable rates. NC IOLTA will post a list of eligible banks on its website beginning in mid-May when banks return their compliance documents (see www.nciolta.org/iolta_banklist.asp). If the bank where your IOLTA trust account is currently located declines to provide a comparable rate, you will have to close the account and set up a new IOLTA trust account at a cooperating bank. However, if your bank initially declines to participate, please contact the NC IOLTA program before taking any action. The NC IOLTA program will work with each bank to provide technical assistance for implementation and compliance. Contact information for the NC IOLTA program appears at the end of this article.

You will be comforted to know that IOLTA programs in states that already have comparability report that relationships between law firms and banks have not been disrupted as very few banks have chosen not to participate. In the unlikely event that your bank stops participating in IOLTA, the NC IOLTA program will cover the costs for replacing checks.

How Do I Contact the NC IOLTA Program for Assistance?

Call (919) 828-0477 and ask Evelyn Pursley, executive director, or Claire Mills, accounts manager. You can also e-mail them: epursley@ncbar.gov or cmills@ncbar.gov.

More information on comparability can be found on the IOLTA website, www.nciolta.org, and in the Summer 2009 edition of the *Journal*. ■

Annual Meeting

You are asked to take notice that the annual meeting of the North Carolina State Bar will be held on Friday, October 29, 2010, in conjunction with the council's quarterly business meeting. Further, the council will hold an election on Wednesday, October 27, 2010, at 11:45 a.m. at the Raleigh Marriott City Center, Fayetteville Street, Raleigh, to choose the agency's president-elect, vice-president, and secretary-treasurer for 2010-2011. All members of the Bar are welcome to attend these events.

Featured Artist—Eric McRay

Eric McRay provides a personal interpretation of jazz—"the classical music of America"—through his vivid paintings. He wants his audience to "hear the music and feel the intensity." McRay does that by capturing the vibrancy and spontaneity of his musical subjects through brilliant color, expressive brushstrokes, and improvisational application of acrylic paint. His paintings "materialize" the auditory art form of jazz as a two dimensional visual art form producing a dynamic "visual rhythm."

McRay was born and raised in urban Washington, DC. During long summer breaks from school, Eric's father, Reedy McRay, would travel with his son back to the quiet rural North Carolina communities of his youth. This was the young Eric's first exposure to the qualities of southern living. "It was peaceful. It was refreshing. I was bedazzled," proclaims McRay.

As an adult, Eric McRay returned to his North Carolinian heritage. He now focuses his painting and his explorations on favorite locales including Raleigh, Wilmington, Morehead City, Swansboro, Winston-Salem, North Carolina beaches, and coastal salt marshes. McRay re-energizes himself, as he says, beneath the majestic North Carolina sun: "Here everything shines, everything is colorful, everything is full of light." His landscapes uniquely capture this spirit of North Carolina living.

McRay earned a BFA degree at the Maryland Institute, College of Art, where he received a four-year scholarship. In 1998, he was juried into downtown Raleigh's prestigious Artspace. McRay has served as vice-president and president of the Artspace Artists Association as well as on Artspace's Board of Directors.

McRay was named one of the "Artists to Watch" for 2001 in *The Raleigh News & Observer*. He was featured in the June 2002 issue of *Southern Living Magazine*. McRay's collectors include American Tobacco Campus, Duke University Medical Center, NC State University, UNC Chapel Hill, SAS Institute, North Carolina Central University Art Museum, and Western Wake Hospital, as well as many private collectors locally, nationally, and internationally. ■

Each quarter, the works of a different contemporary North Carolina artist are displayed in the storefront windows of the State Bar building. The artwork enhances the exterior of the building and provides visual interest to pedestrians passing by on Fayetteville Street. The State Bar is grateful to The Mahler Fine Art, the artists' representative, for arranging this loan program. The Mahler is a full-service fine art gallery representing national, regional, and North Carolina artists, and provides residential and commercial consulting. The Mahler, along with its sister gallery, The Collectors Gallery, are located in downtown Raleigh. Readers who want to know more about an artist may contact owners, Rory Parnell and Megg Rader at (919) 896.7503 or info@themahlerfineart.com

The Greening of the Handbook

In its continuing effort to save money and the environment, the North Carolina State Bar has decided not to print and mail the 2010 edition of the *Lawyer's Handbook*. For the past 14 years, receipt of this annual compendium of the State Bar's rules and ethics authorities has been a reliable harbinger of spring, bringing the Bar's entire membership, now in excess of 24,000 lawyers, up to date on professional regulation. Realizing, however, that the content of the *Handbook* is relatively slow to change and that the publication can be made available online quite inexpensively, the Bar's leadership has determined that it will henceforth provide hard copies on an every-other year basis only. Accordingly, the 2010 *Handbook* will be published only online. Members are able to access the 2010 *Handbook* via the State Bar's website or they can download it directly to their computers for quicker access. Instructions for downloading can be found on the website. The 2011 edition will be printed and mailed as usual, and thereafter the sequence will repeat. It is believed that this measure will save tens of thousands of dollars in copying costs and postage this year. ■

Swimming in the Sea of Social Media

By Tara Wilder

The Board of Paralegal Certification has plunged headfirst into the waters of social media by creating groups on both Facebook (www.facebook.com) and LinkedIn (www.linkedin.com). Both groups can be found on these social media websites by searching under the name "NC Certified Paralegal." Because being informed of current legal practices is an important aspect of a paralegal's job and continuing education, items on current legal events and news in North Carolina and around the country are regularly posted. These social media sites can not only help a paralegal to keep up with current events, but they can also help a paralegal to find a mentor or information on an area of law with which a paralegal may be less familiar.

Since education is one of the primary purposes of paralegal certification, we also post entries about upcoming live CPE courses. A better educated paralegal provides better quality work products for the supervising lawyer and ultimately results in better legal services for the people of North Carolina.

While the general posts are nearly identical, here is a breakdown of the differences in the groups so that you can decide whether to join either or both of the social media groups:

Facebook—This is open anyone interested in promoting the paralegal certification program. Any person with a Facebook account is welcome to join as a fan. In addition to the posts started on both websites, there are several discussion pages that answer the more frequently asked questions about paralegal certification. General information about certification in NC is also posted and there is a link to the paralegal certification website.

LinkedIn—This is a members-only group which provides a discussion forum for certified paralegals. Only LinkedIn members who are currently certified by the NC State Bar Board of Paralegal Certification can join and remain members. In addition to the discussions started on both websites, this group has a job bank to give certified paralegals information about current open employment positions. If you are looking for work or have an open position at your current employer, this is a great place to begin your search or list your opening.

Some recent posts include a shout out to the lawyers with whom we love to work on National Be Kind to Lawyers Day (April 13, 2010). A post on April 19, 2010, has a link to the American Bankruptcy Institute's website where bankruptcy lawyers and paralegals can view free training videos. As of the writing of this article, we have 214 fans on Facebook and 72 members on LinkedIn and will always welcome more. Members of both groups are encouraged to use the sites for networking and education, so dive in and start a discussion! ■

Tara Wilder is the assistant director of the Paralegal Certification Program.

Increased Administrative Fees in Disciplinary Proceedings

Expenses of operating the disciplinary program have increased significantly in recent years. On April 16, 2010, the State Bar Council adopted a new schedule of administrative fees to defray those expenses. The following administrative fees will be taxed to any attorney against whom professional discipline is imposed. These administrative fees apply: (1) to discipline imposed by the Grievance Committee in any case in which the grievance file is opened on or after August 1, 2010 and (2) to discipline imposed by the Disciplinary Hearing Commission (DHC) in any case in which the DHC complaint is filed on or after August 1, 2010.

Schedule of Administrative Fees

For all cases in which the respondent lawyer accepts discipline imposed by the Grievance Committee, $350.

For all DHC cases, the Grievance Committee administrative fee which was in effect on the date the grievance file was opened ($100 if the grievance file was opened before August 1, 2010; $350 if the grievance file was opened on or after August 1, 2010).

Plus

(1) For contested DHC cases in which discipline is imposed, $1500 per day for each day spent in a contested hearing. "A day spent in a contested hearing" is a full day or any fraction of a day in which the DHC hearing panel calls a hearing to order; or

(2) For uncontested DHC cases in which discipline is imposed, $750. "An uncontested DHC case" is a case in which the DHC hearing panel enters a consent order of discipline and does not call a hearing to order.

Pursuant to 27 NCAC 1 D .0903(a)(1)(C), any lawyer who fails timely to pay the administrative fees assessed will be subject to have his or her license to practice law suspended. ■

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Legal Directories Publishing Company *for sponsoring the Councilors' Picnic.*

Committee Considers Confidentiality Implications of Software as a Service

Council Actions

At a meeting on April 16, 2010, the State Bar Council adopted the opinions summarized below upon the recommendation of the Ethics Committee:

2010 Formal Ethics Opinion 1

Representation of Insurance Carrier after Insured Disappears

Opinion rules that a lawyer retained by an insurance carrier to represent an insured whose whereabouts are unknown and with whom the lawyer has no contact may not appear as the lawyer for the insured absent authorization by law or court order.

2010 Formal Ethics Opinion 2

Obtaining Medical Records From Out of State Health Care Providers

Opinion rules that a lawyer may not serve an out of state health care provider with a North Carolina subpoena if the subpoena indicates that the recipient is commanded to comply with the subpoena.

2010 Formal Ethics Opinion 5

Client-Lawyer Relationship in Child Support Enforcement Actions

Opinion rules that the lawyer for a child support enforcement program that brings an action for child support on behalf of the government does not have a client-lawyer relationship with the custodian of the children.

Ethics Committee Actions

At its meeting on April 15, 2010, the Ethics Committee voted to withdraw Proposed 2009 FEO 13, *Providing Limited Legal Services When Working with a Settlement Agent*, until related litigation is resolved. The committee also voted to withdraw and send the following proposed opinions to subcommittees for further study (or continued study): Proposed 2009 FEO 7, *Interviewing a Child Abuse Victim*; Proposed 2009 FEO 14, *Referral of Clients to Title Company Owned by Lawyer's Spouse*; Proposed 2009 FEO 17, *Tacking as Question of Standard of Care*; and Proposed 2010 Formal Ethics Opinion 3, *Cross-examining Current and Former Clients*; Proposed 2010 Formal Ethics Opinion 4, *Lawyer Participating in Barter Exchange Program*; and Proposed 2010 Formal Ethics Opinion 6, *Advertising for Legal Employment in Non-practicing Areas with Intent to Refer Cases*. Three proposed opinions, previously published in the *Journal*, were revised and appear below. Three new proposed opinions are also published for comment. The comments of readers are welcomed.

Proposed 2009 Formal Ethics Opinion 8
Service as Commissioner after Representing Party to Partition Proceeding
April 15, 2010

Proposed opinion provides guidelines for a lawyer for a party to a partition proceeding and rules that the lawyer may subsequently serve as a commissioner for the sale but not as one of the commissioners for the partitioning of the property.

Inquiry #1:

Attorney is retained by a person with an interest in property to represent him in a proceeding to partition the property pursuant to Chapter 46 of the North Carolina General Statutes. N.C. Gen. Stat. §46-6 authorizes the court to appoint a disinterested person to represent any person interested in the property whose name is unknown and who fails to appear in the proceeding. May Attorney represent the existing client and also agree to be appointed to represent any unknown person with interest in the property?

Opinion #1:

No. There is a potential conflict between the interests of the existing client and the interests of the unknown person(s). One of the critical issues in a partition proceeding is whether the property should be sold or partitioned. *See, e.g.,* N.C. Gen. Stat. §46-22(c)(party seeking sale has burden of proving, by a preponderance of the evidence, that actual partition cannot be made without substantial injury to the interested parties). If Attorney has an existing client with a specific interest in the proceeding, Attorney cannot be disinterested as required by N.C. Gen. Stat. §46-6 or exercise independent professional judgment as required by the Rules of Professional Conduct when evaluating and representing the interests of the unknown person(s). The potential conflict cannot be resolved by consent because the unknown person(s) is unavailable to consent. Rule 1.7.

Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the Rules of Professional Conduct as revised effective March 1, 2003, and thereafter amended, and referred to herein as the Rules of Professional Conduct (2003). The proposed opinions are issued pursuant to the "Procedures for Ruling on Questions of Legal Ethics." 27 N.C.A.C. ID, Sect .0100. Any interested person or group may submit a written comment or request to be heard concerning a proposed opinion. Any comment or request should be directed to the Ethics Committee at PO Box 25908, Raleigh, NC 27611, by June 30, 2010.

Captions and Headnotes

A caption and a short description of each of the proposed opinions precedes the statement of the inquiry. The captions and descriptions are provided as research aids and are not official statements of the Ethics Committee or the council.

Inquiry #2:

At the conclusion of the proceeding, the clerk of court orders the public sale of the property and, pursuant to N.C. Gen. Stat. §§1-399.4 and 46-28, appoints Attorney as the commissioner for the sale.[1] May Attorney serve as the commissioner and collect a commission from the public sale?

Opinion #2:

Yes, provided Attorney concludes that he can serve fairly and impartially and, further provided, Attorney terminates his representation of any person with an interest in the property.

The role of the commissioner is a neutral one with fiduciary responsibilities to all of the owners of the property. However, a commissioner conducting a public sale has limited discretion because he must follow the specific procedural requirements for judicial sales set forth in Chapter 1, Article 29A of the General Statutes. Attorney may, therefore, serve as commissioner for the sale upon determining that he can fulfill the role impartially, without bias for or against any of the parties to the partition proceeding, and upon terminating his representation of any person with an interest in the property. In the similar situation of a lawyer serving as a trustee on a deed of trust in foreclosure, the ethics opinions also allow the lawyer to relinquish the representation of the lender or the debtor to serve in the impartial fiduciary role of trustee for the foreclosure. *See* RPC 46, RPC 82, RPC 90.

N.C. Gen. Stat. §46-28.1 permits any party to a partition proceeding to file a petition for revocation of the order confirming the sale provided the petition is filed within 15 days and is based upon grounds that are specified in the statute. Therefore, the client's legal needs may not end with the entry of the order of sale and the appointment of a commissioner. Anticipating that a client might desire additional legal representation after the sale, at the beginning of the representation, the lawyer must obtain the client's informed consent, confirmed in writing, to the lawyer's intention to seek to withdraw from the representation at the conclusion of the proceeding in order to be appointed by the clerk as commissioner. After the proceeding, before seeking the permission of the clerk to withdraw from the representation to serve as the commissioner for the sale, Attorney must again obtain the client's consent to withdraw. *See* Rule 1.16.

Inquiry #3:

At the conclusion of the proceeding, the clerk of court orders a private sale of the property pursuant to N.C. Gen. Stat. §§46-28 and 1-339.33. May Attorney be designated as the person authorized to make the private sale pursuant to N.C. Gen. Stat. §1-339.33(1)?

Opinion #3:

Yes, subject to the conditions set forth in Opinion #2.

Inquiry #4:

If Attorney is appointed the commissioner for a public sale or the person authorized to make the private sale, may Attorney purchase the property at the sale?

Opinion #4:

No. As the appointed commissioner or the person appointed to conduct the private sale, Attorney has a duty to oversee the sale of the property in a fair and impartial manner. Advancing a personal interest by bidding on or making an offer on the property violates this duty. *See* 2006 FEO 5 (county tax lawyer who is appointed commissioner may not bid at tax foreclosure sale).

Inquiry #5:

At the conclusion of the proceeding, the clerk of court orders the public sale of the property but appoints another person as commissioner for the sale. May Attorney bid at the sale on his own behalf?

Opinion #5:

No. This would be a conflict of interest between the lawyer's self interest in purchasing the property at the lowest price and the client's interest in selling the property for the highest price. Rule 1.7(a)(2). However, Attorney may bid on the property if he is doing so on behalf of the client.

Inquiry #6:

At the conclusion of the proceeding, the clerk of court orders the partition of the property. May Attorney agree to be appointed as one of the three commissioners responsible for dividing the property?

Opinion #6:

No. A commissioner for a partitioning must exercise discretion in determining how to divide the property, thus directly affecting the interests of the various parties to the proceeding. Moreover, there remain opportunities for Attorney to advocate for his client's interests in the event the commissioners seek input from the parties or in the event of an appeal. Attorney cannot, therefore, serve as an impartial commissioner. Rule 1.7(a).

Inquiry #7:

Assume that Attorney formerly represented one or more of the parties in a separate but related partition proceeding (i.e., a prior proceeding involving the same property that did not result in partition or sale), but does not represent any of the parties to the current proceeding.

May Attorney serve as one of the commissioners to conduct the sale or to partition the property?

Opinion #7:

Yes, provided Attorney determines that he can act impartially. *See* Opinion #1 and Rule 1.7.

Inquiry #8:

Assume that Attorney formerly represented one or more of the parties in a separate but related partition proceeding (i.e., a prior proceeding involving the same property that did not result in partition or sale), but does not represent any of the parties to the current proceeding.

May Attorney serve as the court-appointed lawyer for any "unknown owner" pursuant to N.C. Gen. Stat. §46-6?

Opinion #8:

Yes, with the informed consent, confirmed in writing, of Attorney's former client(s). Rule 1.9(a) prohibits a lawyer who has formerly represented a client in a matter from representing a new client in the same or a substantially related matter if the interests of the new client are materially adverse to the interests of the former client unless the former client gives informed consent confirmed in writing.

Inquiry #9:

Assume that Attorney formerly represented one or more of the parties in a separate but related partition proceeding (i.e., a prior proceeding involving the same property that did not result in partition or sale), but does not represent any of the parties to the current proceeding.

May Attorney purchase the property at the sale?

Opinion #9:

Yes, unless Attorney received confidential information from a former client relative to the property that Attorney could use to the former client's disadvantage when bidding on the property. Rule 1.9(c)(1).

If a lawyer no longer represents a former client, the lawyer's only duties to the former client are to avoid adverse representations of others in the same or a substantially related matter and to avoid using confidential client information to the disadvantage of the former client. Although the partition sale may be substantially related to the prior partition proceeding, a lawyer who is purchasing for his own interest is not engaged in the representation of an adverse party and, therefore, the prohibition on representations adverse to a former client in Rule 1.9(a) is inapplicable. However, the prohibition on using the confidential information of a former client to the disadvantage of the former client would apply unless, as Rule 1.9(c)(1) permits, the information has become generally known.

Endnote

1. Although the procedure for judicial sales of property set forth in Chapter 1, Article 29A, of the General Statutes provides for the appointment of only one commissioner, it is still the custom in some judicial districts for the clerk of court to appoint three commissioners. The conditions on service as a commissioner for the public sale of property set forth in this opinion apply equally to a lawyer who is appointed by the clerk to serve on a panel of commissioners.

Proposed 2009 Formal Ethics Opinion 11
Representing Debtor in Bankruptcy When Lender is Current Client
April 15, 2009

Proposed opinion rules that a lawyer may undertake the representation of a debtor in a Chapter 13 bankruptcy, although the lender is lawyer's current client, if the lawyer reasonably believes that he will be able to provide competent and diligent representation to both clients and both clients give informed consent.

Inquiry #1:

Lawyer regularly represents Lender in various matters. Lawyer is approached by Client to represent Client in an individual Chapter 13 bankruptcy. Lender has made a loan to Client. To secure the repayment of the loan, Lender holds a first priority deed of trust on Client's residence, a first priority deed of trust on Client's commercial building, and a first priority lien on Client's vehicle. Lawyer currently represents Lender in other matters, but not with regard to the indebtedness of Client to Lender.

As the lawyer for Client in the Chapter 13 bankruptcy, Lawyer will be responsible for reviewing documentation to determine whether Lender and other secured creditors have valid and enforceable security interests in or liens on Client's property. May Lawyer undertake the representation of Client in the Chapter 13 bankruptcy if Lender and Client consent?

Opinion #1:

Lawyer may undertake the representation of Client if Lawyer reasonably believes that he will be able to provide competent and diligent representation to Client in the bankruptcy action, while adequately protecting Lender's interests in those actions or matters where Lawyer represents Lender. Both Client and Lender must give their informed consent to the representation, confirmed in writing.

Because Lawyer currently represents Lender, Lawyer has a concurrent conflict of interest in representing Client in a bankruptcy action in which Lender is a creditor. *See* Rule 1.7(a). Comment [6] to Rule 1.7 provides that "absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated." Consent is necessary because the client as to whom the representation is adverse may feel betrayed, and the resulting damage to the client-lawyer relationship could impair the lawyer's ability to represent the client effectively. On the other hand, the client on whose behalf the adverse representation is undertaken may fear that the lawyer will pursue that client's case less effectively out of deference to the other client.

For client consent to cure the conflict, the lawyer must have a reasonable basis for believing that he will be able to provide competent and diligent representation to both clients. It is improper to represent one client asserting a claim against another in the same litigation, even with informed consent. *See* Rule 1.7, cmt. [17]. Also, if a specific rule, statute, or decision forbids dual representation in the particular context, client consent is irrelevant. *See* Rule 1.7, cmt. [16]. Outside these situations, the lawyer must evaluate objectively whether he will be able to provide competent representation to both clients. The lawyer should consider whether a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances.

In the instant scenario, the interests of the lender and the debtor are adverse. Lender would benefit if Lawyer determines that Lender's deeds of trust and liens are valid and enforceable. Conversely, Debtor would benefit from an opposite finding. However, Lawyer would only be representing the debtor in this particular action. If Lawyer concludes that he would be able to provide competent and diligent representation to Client in the bankruptcy action, while adequately protecting Lender's interests in those actions or matters where Lawyer represents Lender, Lawyer may seek the clients' informed consent to the bankruptcy representation. If Lawyer cannot reasonably conclude that the interests of both clients would be adequately protected if he represents Client in the bankruptcy action, Lawyer must decline the representation. *See* Rule 1.7(b).

Pursuant to Rule 1.0(f), "informed consent" denotes the "agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation appropriate to the circumstances." A lawyer must provide enough information for his client to make an informed decision, such as why the interests are adverse, how the representation may be affected, what risks are involved, and what other options are available. The information should be conveyed to each client in a manner consistent with the clients' level of sophistication. When a lawyer is seeking consent from an unsophisticated individual client, more disclosure and explanation will be required. The client's mere knowledge of the existence of the lawyer's other representation

Public Information

The Ethics Committee's meetings are public, and materials submitted for consideration are generally NOT held in confidence. Persons submitting requests for advice are cautioned that inquiries should not disclose client confidences or sensitive information that is not necessary to the resolution of the ethical questions presented.

will not constitute sufficient disclosure.

Inquiry #2:

Lawyer regularly represents Lender in various matters. Lender has made a loan to Client. To secure the repayment of the loan, Lender holds a first priority deed of trust on Client's residence, a first priority deed of trust on Client's commercial building, and a first priority lien on Client's vehicle. Lawyer currently represents Lender in other matters, but not with regard to the indebtedness of Client to Lender.

Lawyer is approached by Client to represent Client in an individual Chapter 13 bankruptcy. The loan from Lender to Client has matured and Client wants to extend the maturity date of the loan. May Lawyer represent Client in negotiations with Lender?

Opinion #2:

Yes. *See* Opinion #1.

Inquiry #3:

May Lawyer represent Client as to the extension of the maturity date of the loan if Client and Lender reach an agreement for an extension without Lawyer's involvement? If so, may Lawyer file a motion seeking bankruptcy court approval of a refinancing agreement between Client and Lender in order to extend the maturity date of the loan, and then represent Client at the hearing on the motion?

Opinion #3:

Yes. *See* Opinion #1.

Proposed 2009 Formal Ethics Opinion 16 Including Information on Verdicts, Settlements, and Memberships on a Website April 15, 2010

Proposed opinion rules that a website may include a case summary section showcasing successful verdicts and settlements if the section contains factually accurate information accompanied by an appropriate disclaimer and that any reference on the website to membership in an organization with a self-laudatory name must comply with the requirements of 2003 FEO 3.

Editor's Note: Upon adoption of this proposed opinion by the State Bar Council, 2000 FEO 1 will be overruled to the extent it is inconsistent and the Ethics Committee will recommend that the council withdrawal 2009 FEO 6.

Inquiry #1:

Is it possible for a law firm to include on its firm website a section showcasing successful verdicts and settlements without violating Rule 7.1(a)(2)?

Opinion #1:

Yes. Rule 7.1 provides that a lawyer "shall not make a false or misleading communication about the lawyer or the lawyer's services." The rule further provides that a communication is false or misleading if it "is likely to create an unjustified expectation about results the lawyer can achieve." Rule 7.1(a)(2). At issue is whether a law firm can provide information on its past successes without creating unjustified expectations.

Lawyer advertising is commercial speech that is protected by the First Amendment. *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). However, lawyer advertisements may not be deceptive or misleading. *Id.* The United States Supreme Court has noted that advertising by professionals poses special risks of deception because the public lacks sophistication concerning legal services. *In re R.M.J.*, 455 U.S.191 (1982). Accordingly, warnings or disclaimers might be appropriately required in lawyer advertisements to dissipate the possibility of consumer confusion or deception. *Zauderer v. Ohio Disciplinary Counsel*, 471 U.S. 626 (1985).

Consumers of legal services benefit from the dissemination of accurate information in choosing legal representation. *See* DC Legal Ethics Comm., Op. 335 (2006). Lawyers also benefit from the dissemination of accurate information when seeking to enlist the aid of co-counsel in a particular matter. A consumer researching law firms on the internet expects a law firm's website to include information about the firm's past successes, and many firm websites currently include a "verdict and settlements" section. The law firm's duty is to provide that information to the consumer without creating an unjustified expectation about the results the lawyer can achieve. Comment [3] to Rule 7.1 provides that an advertisement that truthfully reports a lawyer's achievements may be misleading "if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case."

Previously, the Ethics Committee determined that statements about a lawyer's or a law firm's record in obtaining favorable verdicts was permissible on a firm's website if the information was provided in a certain context. *See* 2000 FEO 1. According to the opinion, the context would have to include the following:

> disclosure of the lawyer's or firm's history of obtaining unfavorable, as well as favorable, verdicts and settlements; the lawyer's or firm's success in actually collecting favorable verdicts; the types of cases handled and their complexity; whether liability and/or damages were contested; and whether the opposing party or parties were represented by legal counsel. In addition, the verdict record must disclose the period of time examined. Finally, the communication must include a statement that the outcome of a particular case cannot be predicated upon a lawyer's or a law firm's past results.

2000 FEO 1. The requirements set out in 2000 FEO 1 may not be applicable in every scenario and may be so burdensome that they discourage lawyers from providing any information about verdicts and settlements and thereby effectively prevent consumers from getting helpful information.

In considering lawyer advertising, the Oklahoma Bar Association has concluded that a lawyer may advertise specific jury verdicts and settlement amounts if certain requirements are met. The advertisement must be factually accurate; must include an appropriate disclaimer displayed in the same manner and with the same emphasis as the results; must not suggest that the lawyer is promising the same results; must state that settlements are the result of private negotiations between the parties involved that may be affected by factors other than the legal merits of a particular case; and must not violate the lawyer's duty of confidentiality. Oklahoma Ethics Opinion 320 (10/15/04).

By way of example, the Oklahoma Bar opines that a statement in a printed advertisement about the results in a particular case would not violate Rule 7.1 if the statement is accompanied by an equally prominent statement to the effect that each case is different and that prior results should not create an expectation about future results in an individual case. According to the Oklahoma Ethics Committee, such a disclaimer would be

"equally prominent" if the disclaimer is presented in the same manner and with the same emphasis as the statements themselves, and if its import is not obscured or minimized by other language or materials in the advertisement. For example, such a disclaimer in a printed advertisement should use the same font and at least the same size print as the statements themselves.

New York has also considered the use of disclaimers in lawyer advertising. The New York State Bar Association Committee on Professional Ethics opined that if client testimonials and reports of past results are misleading, a disclaimer may cure the otherwise misleading information if the disclaimer is sufficiently tailored to address the information that is misleading, and if the disclaimer's placement on the website is such that it is reasonable to expect that anyone who reads the testimonials and reports of past results will read the disclaimer. NY State Bar Assoc. Comm. on Prof'l Ethics, Op. 771 (2003). The committee further opined that the lawyer should "consider the size of the text and the proximity of the disclaimer to the client testimonials or report of past results. If the disclaimer is in a link, the lawyer should also consider the size and placement of the text signaling the reader to access the link and whether this signal sufficiently informs the reader that reviewing the linked disclaimer is material to any assessment of the information conveyed in the advertisement."

We agree with the reasoning of the New York and Oklahoma bars and conclude that a website may include a case summary section showcasing successful verdicts and settlements if the section contains factually accurate information accompanied by an appropriate disclaimer. The disclaimer must be sufficiently tailored to address the information presented in the case summary section. The disclaimer must be displayed on the website in such a manner that it is reasonable to expect that anyone who reads the case summary section will also read the disclaimer. Depending on the information contained in the case summary section, an appropriate disclaimer should point out that the cases mentioned on the site are illustrative of the matters handled by the firm; that case results depend upon a variety of factors unique to each case; that not all results are provided; and that prior results do not guarantee a similar outcome.

Providing a prominently displayed disclaimer that is specifically tailored to the information presented on a webpage regarding a lawyer or law firm's achievements precludes a finding that the webpage is likely to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters.

Inquiry #2:

Would the following types of information be permitted on a firm website:

- A lawyer's biography referencing a single trial victory in a well-known case or the successful handling of a specific matter;
- A lawyer's biography providing a list of his reported cases, but not including unfavorable reported cases; or
- A lawyer's biography listing "representative matters handled," "recent cases," "recent experience," or the like but only including matters that were favorably resolved for the lawyer's clients?

Opinion #2:

Yes. *See* Opinion #1.

Inquiry #3:

Would the following types of information be permitted on a firm website:

- A lawyer's biography stating that the lawyer has successfully represented numerous corporations or individuals;
- A lawyer's biography stating that the lawyer has argued and won numerous cases before the North Carolina appellate courts without stating that he has also lost cases before the appellate courts; or
- A lawyer's biography stating that the lawyer has successfully handled cases in a specific area of the law without stating that he has also been unsuccessful on cases in that area of the law?

Opinion #3:

Yes. *See* Opinion #1.

Inquiry #4:

2003 FEO 3 states that a lawyer may only advertise his membership or participation in an organization with a self-laudatory name or designation if certain conditions are satisfied. Does 2003 FEO 3 apply to a lawyer's individual biography on his firm's website?

Opinion #4:

Yes. 2003 FEO 3 states that a lawyer may only advertise his membership or participation in an organization with a self-laudatory name or designation if the following conditions are satisfied: (1) the organization has strict, objective standards for admission that are verifiable and would be recognized by a reasonable lawyer as establishing a legitimate basis for determining whether the lawyer has the knowledge, skill, experience, or expertise indicated by the designated membership; (2) the standards for membership are explained in the advertisement or information on how to obtain the membership standards is provided in the advertisement; (3) the organization has no financial interest in promoting the particular lawyer; and (4) the organization charges the lawyer only reasonable membership fees. The opinion also provides that when the membership information may create unjustified expectations, such as the expectation that a lawyer obtains a million dollar verdict in every case, a disclaimer must be included in the advertisement.

Any reference to membership in such an organization must comply with the requirements of 2003 FEO 3. *See also* 2007 FEO 14 (allowing lawyer to advertise his inclusion in the North Carolina Super Lawyers list but not to claim that he is a "super lawyer").

Inquiry #5:

Does 2003 FEO 3 apply to a firm's general reference to such membership on its website, such as "ten of our lawyers were included in the Legal Elite"?

Opinion #5:

Yes. *See* Opinion #4.

2000 FEO 1 is be overruled to the extent it is inconsistent with this opinion.

Proposed 2010 Formal Ethics Opinion 7
Subscribing to Software as a Service While Fulfilling the Duties of Confidentiality and Preservation of Client Property
April 15, 2010

Proposed opinion rules that a law firm may contract with a vendor of software as a service provided the risks that confidential client information may be disclosed or lost are effectively minimized.

Inquiry #1:

Much of software development, including

the specialized software used by lawyers for case/practice management, document management, and billing/financial management, is moving to the "software as a service" (SaaS) model. In the article "Software as a Service (SaaS) Definition and Solutions," Meridith Levinson, writing for the CIO website, explains SaaS as follows:

> Generally speaking, it's software that's developed and hosted by the SaaS vendor and which the end user customer accesses over the Internet. Unlike traditional packaged applications that users install on their computers or servers, the SaaS vendor owns the software and runs it on computers in its data center. The customer does not own the software but effectively rents it, usually for a monthly fee.[1]

The American Bar Association's Legal Technology Resource Center explains SaaS as follows:

> SaaS is distinguished from traditional software in several ways. Rather than installing the software to your computer or the firm's server, SaaS is accessed via a web browser (like Internet Explorer or FireFox) over the Internet. Data is stored in the vendor's data center rather than on the firm's computers. Upgrades and updates, both major and minor, are rolled out continuously. And perhaps most importantly, SaaS is usually sold on a subscription model, meaning that users pay a monthly fee rather than purchasing a license up front.[2]

SaaS for law firms may involve the storage of a law firm's data, including client files, billing information, and work product, on remote servers rather than on the law firm's own computer and, therefore, outside the direct control of the firm's lawyers. Given the duty to safeguard confidential client information, including protecting that information from unauthorized disclosure; the duty to protect client property from destruction, degradation, or loss (whether from system failure, natural disaster, or dissolution of a vendor's business); and the continuing need to retrieve client data in a form that is usable outside of the vendor's product;[4] may a law firm use SaaS?

Opinion #1:

Yes, provided steps are taken effectively to minimize the risk of inadvertent or unauthorized disclosure of confidential client information and to protect client property, including file information, from risk of loss.

Rule 1.6 of the Rules of Professional Conduct states that a lawyer may not reveal information relating to the representation of a client unless the client gives informed consent or the disclosure is impliedly authorized to carry out the representation. Comment [17] explains, "A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision." Comment [18] adds that, when transmitting confidential client information, a lawyer must take "reasonable precautions to prevent the information from coming into the hands of unintended recipients."

Rule 1.15 also requires a lawyer to preserve client property, including information in a client's file such as client documents and lawyer work product, from risk of loss due to destruction, degradation, or loss. *See also* RPC 209 (noting the "general fiduciary duty to safeguard the property of a client"); RPC 234 (duty to store original documents with legal significance in a safe place or return to client); and 98 FEO 15 (lawyer must exercise "due care" when selecting depository bank for trust account).

Although a lawyer has a professional obligation to protect confidential information from unauthorized disclosure, the Ethics Committee has long held that this duty does not compel any particular mode of handling confidential information nor does it prohibit the employment of vendors whose services may involve the handling of documents or data containing client information. *See* RPC 133 (no requirement that firm's waste paper be shredded if lawyer ascertains that persons or entities responsible for the disposal employ procedures that effectively minimize the risk that confidential information may be disclosed). Moreover, the committee has held that, while the duty of confidentiality extends to the use of technology to communicate, "this obligation does not require that a lawyer use only infallibly secure methods of communication." RPC 215. Rather, the lawyer must use reasonable care to select a mode of communication that, in light of the circumstances, will best protect confidential communications and the lawyer must advise affected parties if there is reason to believe that the chosen communications technology presents an unreasonable risk to confidentiality. *Id.*

Furthermore, in 2008 FEO 5, the committee has already held that the use of a web-based document management system that allows both the law firm and the client access to the client's file is permissible:

> provided the lawyer can fulfill his obligation to protect the confidential information of all clients. A lawyer must take steps to minimize the risk that confidential client information will be disclosed to other clients or to third parties. *See* RPC 133 and RPC 215…A security code access procedure that only allows a client to access its own confidential information would be an appropriate measure to protect confidential client information…If the law firm will be contracting with a third party to maintain the web-based management system, the law firm must ensure that the third party also employs measures which effectively minimize the risk that confidential information might be lost or disclosed. *See* RPC 133.

In a recent ethics opinion, the Arizona State Bar's Committee on the Rules of Professional Conduct concurred with 2008 FEO 5 by holding that a law firm may use an online file storage and retrieval system that allows clients to access their files over the internet provided the firm takes reasonable precautions to protect the security and confidentiality of client documents and information.[4]

In light of the above, the Ethics Committee concludes that a law firm may use SaaS if reasonable care is taken effectively to minimize the risks to the confidentiality and to the security of client information and client files. However, the law firm is not required to guarantee that the system will be invulnerable to unauthorized access.[5] Note that no opinion is expressed on the business question of whether SaaS is suitable for a particular law firm.

Inquiry #2:

Are there any "best practices" that a law firm should follow when contracting with a SaaS vendor to minimize the risk?

Opinion #2:

Yes, a lawyer should be able to answer the list of questions below satisfactorily in order to conclude that the risk has been minimized. However, the list is not all-inclusive and consultation with a security professional competent in the area of online computer security is

recommended when contracting with a SaaS vendor. Moreover, given the rapidity with which computer technology changes, what may constitute reasonable care may change over time and a law firm would be wise periodically to consult with such a professional.

The lawyer or law firm should be able to answer the following questions sufficiently to conclude that the risk to confidentiality and security of client file information is minimal:[6]

- What is the history of the SaaS vendor? Where does it derive funding? How stable is it financially?
- Has the lawyer read the user or license agreement terms, including the security policy, and does he/she understand the meaning of the terms?
- Does the SaaS vendor's Terms of Service or Service Level Agreement address confidentiality? If not, would the vendor be willing to sign a confidentiality agreement in keeping with the lawyer's professional responsibilities? Would the vendor be willing to include a provision in that agreement stating that the employees at the vendor's data center are agents of the law firm and have a fiduciary responsibility to protect client information?
- How does the SaaS vendor, or any third party data hosting company, safeguard the physical and electronic security and confidentiality of stored data? Has there been an evaluation of the vendor's security measures including the following: firewalls, encryption techniques, socket security features, and intrusion-detection systems?
- Has the lawyer requested copies of the SaaS vendor's security audits?
- Where is data hosted? Is it in a country with less rigorous protections against unlawful search and seizure?
- Who has access to the data besides the lawyer?
- Who owns the data—the lawyer or SaaS vendor?
- If the lawyer terminates use of the SaaS product, or the service otherwise has a break in continuity, how does the lawyer retrieve the data and what happens to the data hosted by the service provider?
- If the SaaS vendor goes out of business, will the lawyer have access to the data and the software or source code?
- Can the lawyer get data "off" the servers for the lawyer's own offline use/backup? If the lawyer decides to cancel the subscription to SaaS, will the lawyer get the data? Is data supplied in a non-proprietary format that is compatible with other software?
- How often is the user's data backed up? Does the vendor back up data in multiple data centers in different geographic locations to safeguard against natural disaster?
- If clients have access to shared documents, are they aware of the confidentiality risks of showing the information to others? *See* 2008 FEO 5.
- Does the law firm have a back-up for shared document software in case something goes wrong, such as an outside server going down?

Endnotes

1. www.cio.com/article/109704/Software_as_a_Service_SaaS_Definition_and_Solutions, Meridith Levinson, Software as a Service (SaaS) Definition and Solutions, CIO.com (March 15, 2007; accessed March 4, 2010).
2. FYI: Software as a Service (SaaS) for Lawyers, ABA Legal Technology Resource Center, www.abanet.org/tech/ltrc/fyidocs/saas.html.
3. *Id.*
4. Paraphrasing the description of a lawyer's duties in Arizona State Bar Committee on Rules of Professional Conduct, Opinion 09-04 (Dec. 9, 2009).
5. *Id.*
6. List derived from recommendations of Erik Mazzone, Director of Center for Practice Management, North Carolina Bar Association (in e-mail communications with counsel to the Ethics Committee, 3/30/10 and 3/31/10) and ABA Legal Technology Resource Center, *see* fn. 2.

Proposed 2010 Formal Ethics Opinion 8
Consultation with Lawyer as Prospective Mediator
April 15, 2010

Proposed opinion rules that a lawyer who consults with both parties to a dispute relative to the lawyer's prospective service as a mediator may not subsequently represent one of the parties to the dispute.

Inquiry:

Lawyer consulted with Husband on two occasions about separating from Wife. During both meetings, only questions about mediating the marital dissolution were discussed.

Wife attended the third consultation with Lawyer. At the meeting, Lawyer disclosed the prior two meetings with Husband. He also advised Wife that he would remain "neutral" during the meeting with her; would not give either party legal advice; and would only discuss the mediation process. Wife informed Lawyer that she was represented by her own lawyer. Lawyer told Wife that he was willing to serve as the mediator for the marital dispute/dissolution if her lawyer advised her to agree. Lawyer also told Wife that he had discussed his potential roles as either advocate or mediator with Husband in the prior meetings and that, for the present, Husband chose to keep Lawyer "neutral."

At their request, Lawyer subsequently sent a separation checklist to both Husband and Wife. The checklist gives information about the issues a separation agreement should address. It does not provide substantive advice.

Wife consulted with her lawyer and decided not to pursue mediation. Husband would now like to employ Lawyer as his advocate in the equitable distribution action filed by Wife. May Lawyer represent Husband in the equitable distribution action?

Opinion:

No. If Lawyer was acting in the role of a mediator when he consulted with Wife, Rule 1.12(a), *Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral*, prohibits him from representing anyone in connection with a matter in which he participated personally and substantially as a mediator unless all of the parties to the proceeding give informed consent confirmed in writing. Although the mediation never occurred, Lawyer still held himself out to be a neutral and had substantive discussions with Wife about the mediation process. Therefore, he participated substantially in the mediation process and, to protect the integrity of the neutral role of mediators, he is disqualified from representing Husband without the consent of Wife.

Proposed 2010 Formal Ethics Opinion 9
Using Stock Photographs in Advertising
April 15, 2010

Proposed opinion rules that a dramatization disclaimer is not required when using a stock photograph in an advertisement so long as, in the context of the advertisement, the stock photograph is not materially misleading.

Inquiry:

Are dramatization disclaimers required when using stock photographs in a print or video advertisement for legal services?

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Amendments Approved by the Supreme Court

At a conference on March 11, 2010, the North Carolina Supreme Court approved the following amendments to the rules of the North Carolina State Bar:

Amendments Eliminating Certification of Insurance Coverage

27 N.C.A.C. 1A, Section .0200, Membership—Annual Membership Fees

27 N.C.A.C. 1D, Section .0900, Procedures for Administrative Committee

Since 2004, every member has been required annually to submit a certificate stating whether the member is engaged in the private practice of law and, if so, whether the member is covered by a policy of professional liability insurance. These rule amendments eliminate the requirement by the deletion of the enabling rule in its entirety and by eliminating references to the requirement from the rules on administrative suspension.

Amendment to the Procedures for the Ethics Committee

27 N.C.A.C. 1D, Section .0100, Procedures for Ruling on Questions of Legal Ethics

The amendments codify a procedure for a consent agenda to remove items from the Ethics Committee's agenda that do not warrant discussion by the full committee.

Amendments to the Rules Governing the Attorney/Client Assistance Program

27 N.C.A.C. 1A, Section .0700, Standing Committees of the Council

27 N.C.A.C. 1D, Section .0700, Procedures for Fee Dispute Resolution

The standing committee in charge of the Attorney/Client Assistance Program is eliminated by these rule amendments. The program will continue to operate under the auspices of the Grievance Committee. In addition, changes to the operating rules for the fee dispute resolution program make the rules more accurately reflect the actual procedures and functioning of the program.

Amendments to the Procedures for the Administrative Committee

27 N.C.A.C. 1D, Section .0900, Procedures for Administrative Committee

The rule amendments empower the executive director of the State Bar to reinstate a member who was administratively suspended upon the member's satisfaction of all membership obligations, the payment of all associated fees, and the executive director's determination that there are no persisting issues relating to the member's character or fitness.

Amendments to the CLE Rules

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program

The amendments require all lawyers admitted to the State Bar on or after January 1, 2011, to complete a 12-hour course of instruction on professionalism, professional responsibility, and law office management to be known as the North Carolina State Bar New Admittee Professionalism Program. Other amendments to the CLE rules prohibit a disbarred lawyer from teaching an approved CLE course within five years of the effective date of the disbarment.

Amendments to the Plan of Legal Specialization

27 N.C.A.C. 1D, Section .1800, Hearing and Appeal Rules of the Board of Legal Specialization and Section .2900, Certification Standards for the Elder Law Specialty

Amendments to the hearing and appeal rules of the specialization program improve the clarity of the rules, streamline the appeal process, and make hearings less adversarial. Amendments to the standards for the elder law specialty make the experience requirements for certification the same as those required by the National Elder Law Foundation, the testing organization for the elder law specialty.

Amendments to the Plan for Certification of Paralegals

27 N.C.A.C. 1G, Section .0100, The Plan for Certification of Paralegals, and Section .0200, Continuing Paralegal Education

The amendments allow a Juris Doctor degree from an ABA-accredited law school to satisfy the educational requirements for certification and prohibit continuing paralegal education credit for self-study except for courses taken online.

Amendments Pending Approval of the Supreme Court

At its meeting on April 16, 2010, the State Bar Council voted to adopt the following amendment for transmission to the Supreme Court for approval (for the complete text see the Spring 2010 *Journal* or visit the State Bar website: www.ncbar.gov):

Proposed Amendment to Rules Governing Judicial District Grievance Committees

27 N.C.A.C. 1B, Section .0200, Rules Governing Judicial District Grievance Committees

The proposed amendment increases the maximum number of members of a district grievance committee from 13 to 21, and increases the maximum number of public members from three to five.

Proposed Amendments

At its meeting on April 16, 2010, the council voted to publish the following proposed rule amendments for comment:

Proposed Amendment to Membership Requirements

27 N.C.A.C. 1A, Section .0200, Membership – Annual Membership Fees

The proposed amendment requires a State Bar member to update the member's address, including e-mail address, each year.

.0202 Register of Members

(a) Initial Registration with State Bar.

...

(d) Updating Membership Information. Each year on or before July 1, every member shall provide or verify the member's current name, mailing address, and e-mail address.

Proposed Amendment to Eliminate a Standing Committee of the Council

27 N.C.A.C. 1A, Section .0700, Standing Committees of the Council

The Justice System Committee of the State Bar Council has been defunct for many years. The proposed amendment would eliminate this standing committee of the council.

.0701 Standing Committees and Boards

(a) Standing Committees. Promptly after his or her election, the president shall appoint members to the standing committees identified below to serve for one year beginning January 1 of the year succeeding his or her election. ...

(1) Executive Committee.

...

~~(6) Justice System Committee. It shall be the duty of the Justice System Committee to assist the council in identifying and advancing the appropriate role of the State Bar in connection with initiatives, programs, legislation and other actions intended to improve access to justice, simplify the law and judicial procedures, and enhance the justice system and the public's confidence in that system; to consider means and methods of enhancing the degree of professionalism exhibited in the practice and conduct of the lawyers of this State; and to perform such other duties and consider such other matters as the council or the president may designate.~~

(6) ~~(7)~~ Legal Assistance for Military Personnel (LAMP) Committee.

...

[Renumbering remaining paragraphs]

...

Proposed Amendment to Model Bylaws for Judicial District Bars

27 N.C.A.C. 1A, Section .1000, Model Bylaws for Use by Judicial District Bars

The proposed amendment to the model bylaw incorporates the statutory requirement (N.C. Gen. Stat. §84-18.1(b)) that thirty (30) days notice be given of any meeting at which there will be a vote on mandatory district bar dues.

.1007 Meetings

(a) Annual meetings:

...

(c) Notice for meeting to vote on annual membership fee: Notwithstanding the notice periods set forth in paragraphs (a) and (b) above, the written notice for any meeting at which the active members will vote on whether to impose or increase an annual membership fee shall be mailed or delivered to each active member of the district bar at the member's last known mailing address on file with the district bar at least 30 days before the date of the meeting.

(d) ~~(c)~~ Quorum:

...

Proposed Amendment to the Rules Governing the Practical Training of Law Students

27 N.C.A.C. 1C, Section .0200, Rules Governing the Practical Training of Law Students

The proposed amendment will authorize the identification of a law student practicing under the auspices of the rules on a business card issued by the supervising lawyer provided the student's status as a nonlawyer is affirmatively disclosed.

.0207 Use of Student's Name

(a) A legal intern's name may properly

(1)...

(2) ...; and

(3) be printed on a business card provided the name of the supervising attorney also appears on the business card and there appears below the legal intern's name a clear identification that the legal intern is certified under these rules. An appropriate designation is "Certified Legal Intern under the Supervision of [supervising attorney]."

(b) A student's name may not appear

~~(1)~~ on the letterhead of a supervising attorney, legal aid clinic, or government agency;.

~~(2) on a business card bearing the name of a supervising attorney, legal aid clinic, or government agency; or~~

~~(3) on a business card identifying the legal intern as certified under these rules.~~

Proposed Amendments to the Rules and Regulations Governing the CLE Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program, and Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

The proposed amendments will do the following: (1) require a lawyer to be a nonresident for at least six months in a given year to qualify for the nonresident exemption from mandatory CLE; (2) increase the number of days for

Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send your written comments to L. Thomas Lunsford II, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611.

The Process

Proposed amendments to the Rules of the North Carolina State Bar are published for comment in the *Journal*. They are considered for adoption by the council at the succeeding quarterly meeting. If adopted, they are submitted to the North Carolina Supreme Court for approval. Amendments become effective upon approval by the court. **Unless otherwise noted, proposed additions to rules are printed in bold and underlined, deletions are interlined.**

submission and for processing of a request for approval of a course or program; and (3) permit the Board of Continuing Legal Education to waive interest on delinquent payments of sponsor fees upon a showing of good cause.

.1517 Exemptions

(a) Notification of Board.

...

(d) Nonresidents. Any active member residing outside of North Carolina who does not practice in North Carolina **for at least six (6) months** and does not represent North Carolina clients on matters governed by North Carolina law shall be exempt from the requirements of these rules.

(e) Law Teachers.

...

.1520 Accreditation of Sponsors and Programs

(a) Accreditation of Sponsors.

(b) Presumptive Approval for Accredited Sponsors.

(1) ...

(2) The board may evaluate a program presented by an accredited sponsor and, upon a determination that the program does not satisfy the requirements of Rule .1519, notify the accredited sponsor that any presentation of the same program, the date for which was not included in the announcement required by Rule .1520(e) below, is not approved for credit. Such notice shall be sent by the board to the accredited sponsor within ~~30~~ 45 days after the receipt of the announcement. The accredited sponsor may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.

...

(e) Program Announcements of Accredited Sponsors. At least ~~30~~ 50 days prior to the presentation of a program, an accredited sponsor shall file an announcement, on a form prescribed by the board, notifying the board of the dates and locations of presentations of the program and the sponsor's calculation of the CLE credit hours for the program.

(f) ...

.1601 General Requirements for Course Approval

(a) Approval.

CLE activities may be approved upon the written application of a sponsor, other than an accredited sponsor, or of an active member on an individual program basis. An application for such CLE course approval shall meet the following requirements:

(1) If advance approval is requested by a sponsor, the application and supporting documentation, including one substantially complete set of the written materials to be distributed at the course or program, shall be submitted at least ~~45~~ 50 days prior to the date on which the course or program is scheduled. If advance approval is requested by an active member, the application need not include a complete set of written materials.

(2) In all other cases, the application and supporting documentation shall be submitted by the sponsor not later than ~~45~~ 50 days after the date the course or program was presented or prior to the end of the calendar year in which the course or program was presented, whichever is earlier. Active members requesting credit must submit the application and supporting documentation within ~~45~~ 50 days after the date the course or program was presented or, if the ~~45~~ 50 days have elapsed, as soon as practicable after receiving notice from the board that the course accreditation request was not submitted by the sponsor.

(3)

...

(b) Course Quality and Materials. .... Any sponsor, including an accredited sponsor, who expects to conduct a CLE activity for which suitable written materials will not be made available to all attendees may obtain approval for that activity only by application to the board at least ~~45~~ 50 days in advance of the presentation showing why written materials are not suitable or readily available for such a program.

(c) Facilities.

...

(e) Records. Sponsors, including accredited sponsors, shall within 30 days after the course is concluded

(1) ...

(2) remit to the board the appropriate sponsor fee; and, if payment is not received by the board within 30 days after the course is concluded, interest at the legal rate shall be incurred; **provided, however, the board may waive such interest upon a showing of good cause by a sponsor;** and

(3) ...

Proposed Amendments to the Rules for Prepaid Legal Services Plans

27 N.C.A.C. 1E, Section .0300, Rules Concerning Prepaid Legal Services Plans

The proposed amendments authorize a member of the State Bar's legal staff to review and pass upon initial applications for registration of a prepaid legal services plan.

.0304 Registration Procedures

To register with the North Carolina State Bar, a prepaid legal services plan must comply with all of the following procedures for initial registration:

(a) ...

(c) The Authorized Practice Committee ("committee"), as a duly authorized standing committee of the North Carolina State Bar Council, shall ~~review the initial~~ **oversee the** registration ~~statements submitted by each~~ **of** prepaid legal services ~~plan~~ **plans in accordance with these rules**. ~~to determine if the plan, as represented in its registration statement, meets the definition of a prepaid legal services plan as defined in Rule .0303, and therefore should be registered in North Carolina. The committee may appoint a subcommittee to conduct an initial review and to recommend to the committee whether the plan meets the definition of a prepaid legal services plan.~~ The committee shall also establish any deadlines by when registrations may be submitted for review and any additional, necessary rules and procedures regarding the initial and annual registrations, and the revocation of registrations, of prepaid legal services plans.

.0305 Registration

Counsel will ~~The committee shall~~ review the plan's initial registration statement ~~form~~ to determine whether the **registration statement is complete and the** plan**, as described in the registration statement,** meets the definition of a prepaid legal services plan **and otherwise satisfies the requirements for registration provided by Rule .0304**. If**, in the opinion of counsel,** the plan~~, as submitted,~~ **clearly** meets the definition **and the registration statement otherwise satisfies the requirements for registration,** ~~the committee shall instruct~~ the secretary **will** ~~to~~ issue a certificate of registration to the plan's sponsor. If**, in the opinion of counsel,** the plan does not meet the definition~~,~~ **or otherwise**

fails to satisfy the requirements for registration, counsel will inform the plan's sponsor that the registration is not accepted and explain any deficiencies ~~the secretary shall advise the plan's sponsor of the committee's decision and the reasons therefore~~. Upon notice that the plan's registration has not been accepted, the plan sponsor may resubmit an amended plan registration form or request a hearing before the committee pursuant to Rule .0313 below. Counsel will provide a report to the committee each quarter identifying the plans submitted and the registration decision made by counsel.

Proposed Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Rules of Professional Conduct

The proposed amendment to the Preamble of the Rules of Professional Conduct adds a statement urging lawyers not to discriminate in their practices on the basis of race, gender, national origin, religion, age, disability, sexual orientation, or gender identity. The Preamble is the introduction to the Rules and is never the basis for professional discipline.

The proposed amendments to Rule 8.3, *Reporting Professional Misconduct*, exempts a lawyer acting as a mediator from reporting professional misconduct if information relative to the misconduct is protected from disclosure by the North Carolina Supreme Court Standards of Professional Conduct for Mediators.

0.1 Preamble: A Lawyer's Responsibilities

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

[2] ...

[6] While employed or engaged in a professional capacity, a lawyer should not discriminate on the basis of a person's race, gender, national origin, religion, age, disability, sexual orientation, or gender identity. This responsibility of non-discrimination does not prohibit a lawyer's advocacy on any issue.

[7] ~~[6]~~ ....

[Renumbering remaining paragraphs]

Rule 8.3 Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the North Carolina State Bar or the court having jurisdiction over the matter.

(b) ...

(e) A lawyer who is serving as a mediator and who is subject to the North Carolina Supreme Court Standards of Professional Conduct for Mediators (the Standards) is not required to disclose information learned during a mediation if the Standards do not allow disclosure. If disclosure is allowed by the Standards, the lawyer is required to report professional misconduct consistent with the duty to report set forth in paragraph (a).

Comment

[1] ...

[7] The North Carolina Supreme Court has adopted Standards of Professional Conduct for Mediators (the Standards) to regulate the conduct of certified mediators and mediators in court-ordered mediations. Mediators governed by the Standards are required to keep confidential the statements and conduct of the parties and other participants in the mediation, with limited exceptions, to encourage the candor that is critical to the successful resolution of legal disputes. Paragraph (e) recognizes the concurrent regulatory function of the Standards and protects the confidentiality of the mediation process. Nevertheless, if the Standards allow disclosure, a lawyer serving as a mediator who learns of or observes conduct by a lawyer that is a violation of the Rules of Professional Conduct is required to report consistent with the duty set forth in paragraph (a) of this Rule. In the event a lawyer serving as a mediator is confronted with professional misconduct by a lawyer participating in a mediation that may not be disclosed pursuant to the Standards, the lawyer/mediator should consider withdrawing from the mediation or taking such other action as may be required by the Standards. See, e.g., N.C. Dispute Resolution Commission Advisory Opinion 10-16 (February 26, 2010).

Editor's Note:

Amendments to the IOLTA Rules Approved by the Supreme Court on January 28, 2010.

27 N.C.A.C. 1D, Section .1300, Rules Governing the Administration of the Plan for Interest on Lawyers' Trust Accounts

The rule amendments implementing interest rate comparability for the IOLTA program were approved by the Supreme Court on January 28, 2010. After submitting the amendments to the Office of Administrative Hearings for incorporation into the North Carolina Administrative Code, the State Bar was advised that formatting rules for the code do not permit a rule to be designated with a hyphenated number. Therefore, Rule .1316-1 will be renumbered Rule .1317 and all subsequent rules in this section of subchapter 1D will be renumbered. ■

Proposed Opinions (cont.)

Opinion:

No. Rule 7.1, *Communications Concerning a Lawyer's Services*, sets forth the essential requirements for all advertising by lawyers. Rule 7.1(a) states that a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. Rule 7.1(b) provides that a communication by a lawyer that contains a dramatization depicting a fictional situation is misleading unless it contains a conspicuous statement at the beginning and end of the communication "explaining that the communication contains a dramatization and does not depict actual events or real persons."

Dramatizations of fictional cases in video advertisements ("commercial dramatizations") are potentially misleading. *See* RPC 164. Therefore, such advertisements require the dramatization disclaimer. *See* Rule 7.1(b). "Stock photographs" are professional photographs of common places, events, or people that can be used and reused for advertising. Like commercial dramatizations, stock photographs do not depict actual events or actual clients. However, unlike commercial dramatizations, stock photographs, because they are static, do not have the same tendency to mislead a consumer of legal services. Unless in the context of the advertisement or marketing document, the stock photograph creates a material misrepresentation of fact, a stock photograph may be included in legal advertisement without a dramatization disclaimer. *See* Rule 7.1(a)(1). ■

Grievance Committee and DHC Actions

Disbarments

Mark H. Badgett of Pinnacle was disbarred by the DHC. Badgett was a district court judge in District 17B until the Supreme Court removed him from the bench. The Supreme Court found that while he was a judge, Badgett was deceptive, made false representations to the district attorney and to an SBI agent, attempted to influence the recollections of witnesses, and gave incredible testimony before the Judicial Standards Commission.

J. Lee Hatch of Four Oaks surrendered his law license and was disbarred by the Johnston County Superior Court. Hatch pled guilty to the counts of felony obstruction of justice, ten counts of altering an official case record, and one count of conspiracy to commit felony obstruction of justice.

Cynthia L. Jaeger of Winston-Salem surrendered her law license and was disbarred by the Johnston County Superior Court. Jaeger pled guilty to ten counts of felony obstruction of justice and ten counts of altering an official case record.

Chadwick C. Lee of Smithfield surrendered his law license and was disbarred by the Johnston County Superior Court. Lee pled guilty to ten counts of felony obstruction of justice, ten counts of altering an official case record, and one count of conspiracy to commit felony obstruction of justice.

Alton Y. Lennon of Wilmington was disbarred by the DHC. Lennon misappropriated entrusted funds, made misrepresentations to his client, concealed information and documents from his client, and engaged in business transactions with his client that sacrificed his client's interests.

Treve B. Lumsden of Emerald Isle surrendered his law license and was disbarred by the Wake County Superior Court. Lumsden misappropriated $59,000 in entrusted funds.

Michael J. Miller of Charlotte surrendered his law license and was disbarred by the State Bar Council. Miller misappropriated $25,000 in entrusted funds.

The DHC disbarred **William D. Orander** of Goldsboro. Orander engaged in mortgage fraud by preparing and providing to lenders false HUD-1 Settlement Statements that disguised purchases as refinances.

Kenneth L. Poortvliet of Greensboro surrendered his law license and was disbarred by the Wake County Superior Court. Poortvliet misappropriated approximately $9,000 in entrusted funds.

Suspensions & Stayed Suspensions

Wilson lawyer **Willie D. Gilbert** was suspended for five years by the DHC. The suspension is stayed for five years on numerous conditions. A dissenting panel member would have imposed disbarment. The DHC found that Gilbert misappropriated client funds.

The DHC suspended **Christopher Dean Johnson** of Charlotte for three years. The suspension is stayed on numerous conditions. Johnson neglected domestic cases, lied to clients about the status of their cases, and signed a client's signature on a verification page without the client's knowledge or consent.

The DHC suspended Hendersonville lawyer **Randolph Romeo** for three years. The suspension is stayed for two years on numerous conditions. Romeo chronically failed to comply with trust accounting rules in his real estate practice.

The DHC suspended Charlotte lawyer **Robert Trobich** for two years. The suspension is stayed for three years on numerous conditions. Trobich neglected his client's lawsuit, resulting in dismissal of her claims with prejudice. Trobich falsely told his client that he had settled her case and paid her out of his own pocket while representing that the funds were from the settlement. He also made misrepresentations to the Grievance Committee.

Mohammed M. Shyllon of Raleigh was suspended for 18 months by the DHC. Shyllon practiced law during a disciplinary suspension.

Bambi Walters of Virginia was suspended from practicing in North Carolina trial and appellate courts for 18 months. She failed to appear in response to the North Carolina Business Court's contempt citation.

Interim Suspension

The DHC entered an order of interim suspension against Raleigh lawyer **Johnny S. Gaskins**, who was convicted in federal court of several federal felony charges.

Censures

Brian R. Brown of Raleigh was censured by the Grievance Committee. While representing an estate, Brown failed to safeguard signed blank estate account checks and failed to supervise his paralegal, allowing her to embezzle over $200,000 from the estate. Brown also failed to regularly review bank statements and cancelled checks.

The DHC censured Sanford lawyer **John M. Holmes Jr.** Holmes ran what he represented was a "law firm" which purported to have "firm members" all over the state and obtained traffic ticket clients by mass direct mail solicitation. The alleged members were actually independent contractors. This arrangement led to multiple instances of client neglect. Holmes had rejected the Grievance Committee's censure.

Pamela Hunter of Charlotte was censured by the DHC. Hunter failed to use reasonable diligence in representing a client. Hunter had rejected the Grievance Committee's reprimand.

Robert Train III of Pittsboro was censured by the Grievance Committee. In 2004, Train contracted with American Family Legal Plans to provide legal services to consumers. American Family marketed a "plan" that did not qualify as a prepaid legal services plan under the State Bar Rules in effect at the time. Train assisted the company's unauthorized practice of law. Train and American Family did not inform consumers that American Family paid Train a much lower fee for his legal services than it charged the consumers for those services. Train allowed a third party

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Law School Briefs

All of the law schools located in North Carolina are invited to provide material for this column. Below are the submissions we received this quarter.

Charlotte School of Law

Charlotte School of Law's Trial Team placed in the top four in the nation in the AAJ Student Trial Advocacy Competition Finals held in New Orleans March 18-21. The team, comprised of Mason Nowaski, Stephen Corby, Candace Davis (substituting for Michelle Hazelton), and Kyle Payne, was joined by coaches Rob Corbett and Karen Youmans. The CharlotteLaw team went up against the University of Texas in the quarter finals and won to move on to the semi-finals where they competed against the University of Wisconsin and lost by just 1 point with a score of 79-80. University of Wisconsin went on to win the nationals, Georgetown finished as the runner-up, with NYU and CharlotteLaw rounded out the top four in the nation.

Charlotte School of Law's Center for Professional Development is pleased to announce a 95% career placement rate for its 2009 inaugural graduating class. Specifically, under measures and standards set by the National Association of Law Placement (NALP), 95.2% of the 64 students in the 2009 spring and summer graduating class found employment within nine months following graduation. This well exceeds the NALP average for all law schools nation-wide for the Class of 2008 (89.9%) and across all classes 1997-2008 (89%).

The Public Interest Law Society (PILS) at Charlotte School of Law is holding workshops to assist homebuyers who were victims of fraudulent business practices acknowledged by Beazer Homes USA in a deferred prosecution agreement reached with the US District Court for the Western District of North Carolina in July 2009. Under the agreement Beazer agreed to pay $10 million toward a restitution fund. Processes and procedures are now in place for Beazer homebuyers to file claims with a third-party administrator responsible for managing the fund, and the CharlotteLaw student organization is assisting homebuyers in completing the claim forms.

Duke Law School

Several new scholars will join the Duke Law faculty July 1:

■ Samuel Buell is an expert in federal criminal law whose writing and teaching also focuses on the regulation of corporations and financial markets. His scholarship is informed by his decade-long service as an assistant US attorney. He led multiple complex investigations and prosecutions that involved fraud and racketeering, and was a prosecutor with the Enron Task Force. He comes to Duke from the Washington University School of Law in St. Louis.

■ John de Figueiredo is a leading scholar in the areas of law and economics, political and legal strategy, innovation management, and competitive strategy, currently on the faculties of the Anderson School of Management and School of Law at UCLA. He engages in formal mathematical and statistical modeling of business problems that integrate all these disciplines.

■ Daniel Chen, an emerging and innovative scholar in the areas of law and economics and the development of legal institutions, currently is a Kauffman Fellow at the University of Chicago Law School. His research and teaching interests span the areas of tax, contracts, and procedure.

Three Duke Law graduates land Supreme Court clerkships for the 2010-2011 term:

■ Amy Mason Saharia '05 will clerk for Associate Justice Sonia Sotomayor.

■ Garrick Sevilla '07 will clerk for Associate Justice Samuel Alito.

■ Allison Jones '07 will clerk for Associate Justice Clarence Thomas.

Recent events and visitors:

■ Associate Justice Stephen Breyer took part in a wide-ranging "Lives in the Law" conversation with Dean David Levi and Professor Walter Dellinger on April 8.

■ Vice-President Al Gore opened the Center on Law, Race, and Politics' conference on race in 21st-century America on April 8. The conference paid tribute to the life and scholarly legacy of the late Dr. John Hope Franklin, a former member of the Duke Law faculty.

Elon University School of Law

Elon announces creation of Billings, Exum, & Frye National Moot Court Competition—Elon Law announced on April 28 the creation of the Billings, Exum, & Frye National Moot Court Competition, named in honor of three of the most distinguished lawyers and judges in North Carolina, each of whom has served as chief justice of the North Carolina Supreme Court, and now serves as a member of the Elon University School of Law National Advisory Board.

George R. Johnson Jr., dean of the law school, said the annual competition would commemorate the significant contributions of Rhoda Bryan Billings, James G. Exum Jr., and Henry E. Frye, to appellate advocacy and the jurisprudence of the state of North Carolina.

"We are honored that Justices Billings, Exum, and Frye have agreed to have Elon Law's national moot court tournament bear their names," Johnson said. "The tournament will honor them, reflecting their leadership, professionalism, and service to the profession and to the greater society."

The competition will focus on issues pertaining to constitutional law and public policy, with the first tournament scheduled for the spring of 2011 at Elon Law in Greensboro.

Teaching Law for Engaged Learning Conference—Elon Law hosted an academic conference entitled "Teaching Law for Engaged Learning" on April 10. The conference brought together more than 50 legal educators from around the nation, all focused on developing as teachers and improving legal education.

"Our focus was on teaching strategies that enrich classical traditions of legal education through methods that resonate with law students today and derive from current research on engaged learning," said Elon Law professor

Steve Friedland.

Complete reports about the moot court competition, the engaged learning conference, and presentations at Elon Law by Justice Sandra Day O'Connor and NPR's Nina Totenberg are available at law.elon.edu.

North Carolina Central University School of Law

US Court of Appeals Fourth Circuit Visit—On April 8, a three-member panel of the Fourth Circuit US Court of Appeals heard oral arguments in three cases in the Moot Court Room. Judge Allyson Duncan, Judge Andre Davis, and Chief Judge William Traxler questioned attorneys for petitioners and respondents before a packed audience of students and faculty. At the conclusion of the arguments the judges spoke with students and provided responses to a variety of questions regarding the court. Afterwards, a luncheon was held for the judges and their clerks with students and faculty in the law school's Great Hall. Chief Judge Traxler commented on the importance of keeping courts close to law schools for the benefit of the legal profession. The visit was particularly special for Judge Allyson Duncan. Judge Duncan is a former member of the faculty of the law school and her mother, Anne McKay Duncan, served as director of the law library for 20 years. Beloved by alumni, Anne McKay Duncan's beautiful portrait hangs prominently in the entrance to the law library. This was the second time in four years that the fourth circuit court has heard arguments before students in the law school's Moot Court Room.

Commencement 2010—The Honorable L. Douglas Wilder was the keynote speaker at the May 15, 2010, commencement exercise for the North Carolina Central University School of Law. Wilder is the former governor of the state of Virginia and former mayor of the city of Richmond. Wilder graduated from the Howard University School of Law and co-founded the law firm of Wilder, Gregory and Associates. In addition to being elected governor and mayor, Wilder has also served as a state senator in the Virginia legislature and was also elected the state's lieutenant governor.

University of North Carolina School of Law

School rises in US News & World Report *rankings*—The school has risen two notches in the 2011 edition of the *US News & World Report's* "America's Best Graduate Schools." The school ranks 28th best, following last year's rise from 38th to 30th. The school's reputation among scholars also moved up, placing 17th among lawyers and judges, and 20th among scholars.

"Punishing Poverty: Exposing Racial and Economic Inequality in the Criminal Justice System"—The 14th Annual Conference on Race, Class, Gender, and Ethnicity addressed problems in the incarceration process, featuring three panels on stages in the journey through the criminal justice system: entry into the system, life inside the system, and leaving the system.

Professor Gibson participates in development of electronic filing procedures—The advent of electronic filing technology has created policy questions for courts. S. Elizabeth Gibson is the reporter for the Advisory Committee on Bankruptcy Rules, a federal committee appointed by the chief justice of the United States, and she is currently collaborating on three projects related to the trend towards electronic filing. Gibson also recently earned the University's Mentor Award for Lifetime Achievement.

Acting ambassador from S. Africa visits UNC—Johnny Moloto, the chargé d'affaires ad interim (acting ambassador) from South Africa to the United States, spoke on campus about reforming the United Nations Security Council.

The annual North Carolina Banking Institute CLE program, held in March in Charlotte, focuses on contemporary banking law issues. This year, speakers included Karen Shaw Petrou, Federal Financial Analystics, Inc.; Ed O'Keefe, general counsel of Bank of America; and Joe Smith, North Carolina commissioner of banks and chair of the Conference of State Bank Supervisors.

William P. Murphy Distinguished Lecture—Stephen B. Bright, president and senior counsel of the Atlanta-based Southern Center for Human Rights, delivered the 2010 William P. Murphy Distinguished Lecture in March. Bright is a leading voice on the death penalty and human rights violations in US prisons.

School mourns the loss of four beloved emeriti faculty members—Bob Byrd, Gene Gressman, Dan Pollitt, and Sally Sharp.

Wake Forest University School of Law

Wake Forest University School of Law and the new Center for Bioethics, Health, and Society hosted a conference on "Patient-Centered Health Law and Ethics" on Thursday, April 15, in the Worrell Professional Center. The conference, featuring Mark A. Hall, Wake Forest University law professor and director of the Center for Bioethics, Health, and Society, and Lois Shepherd, a director for the University of Virginia's Center for Biomedical Ethics and Humanities, involved participants from law and other academic fields including sociology, medicine, philosophy, and religion. Scholars from these fields shared their perspectives on whether law and ethics should focus more on patients' concerns than on the concerns of healthcare providers, insurers, or the government. The *Wake Forest Law Review* will report about the scholarly discussion, together with short essays submitted by the speakers. This inaugural conference of the Center for Bioethics, Health, and Society is made possible by a generous gift from David Zacks ('64, JD '67), a partner at Kilpatrick Stockton in Atlanta, who is the co-founder of the American Cancer Society Patient Navigator Program and past national chair of the board as well as the co-chair-elect of the Wake Forest University School of Law, Law Board of Visitors, among others.

The Wake Forest University School of Law has approved a new student-edited publication: the *Wake Forest Journal of Law and Policy*. The *Journal of Law and Policy* will issue its first publication in the 2010-11 academic school year. "The *Journal* is an interdisciplinary publication that explores the intersection of legal issues with public and social policy," said Melanie Johnson Raubach ('10). "Consistent with Wake Forest's motto of 'Pro Humanitate,' the *Journal's* mission is to introduce, maintain and advance discourse so as to uncover policies that will engender equality and the true administration of justice." The *Journal* will publish primarily legal analyses, but will also include other scholarly works and social commentary.

Wake Forest University School of Law's Innocence and Justice Clinic is celebrating the recent release of Machello Bitting after he served nine years in prison. It is the first time the students' work in the clinic has

resulted in a reduced sentence. The January victory came on the eve of the clinic's one-year anniversary. "If it wasn't for the research of our clinic students, Mr. Bitting would still be serving a sentence that was longer than it should have been," said clinic co-director Carol Turowski. "It's even more fitting that his release came the same month as the clinic's first-year anniversary." Wake Forest third-year law students Emile Thompson and Caitlin Torney discovered the sentencing miscalculation as part of their clinical course, which was a follow-up to the Forsyth County DNA Project. They then turned to Forsyth County District Attorney Jim O'Neill, who expedited the case. "The students' diligent efforts at investigating the case led to today's results," she said. ■

Professionalism (cont.)

which occurred when he was a young lawyer in his first job. He started in a civil defense firm in Alabama and was mentored by an outstanding trial lawyer who went out of his way to make him feel welcome. His mentor went out of the county to try a case against a very capable plaintiff's lawyer, against whom he had tried many cases through the years. As the case progressed, everything seemed to be going the plaintiff's way and Tom's mentor was not objecting to anything, appearing to be confused. The plaintiff's attorney then approached the bench and asked the trial judge to declare a mistrial because he did not think the defense attorney was his usual self. It was later determined that the defense attorney, Tom White's mentor, was in the early stages of Alzheimer's. What an act of professionalism! Remember that we have outstanding resources in the Lawyer Assistance Programs in North Carolina. The State Bar has PALS and FRIENDS, the Bar Association has BarCARES, and the CJCP has the Professionalism Support Initiative (PSI). If you know a lawyer who is struggling because of addiction, mental health problems, or unprofessional conduct, call one of the above referenced organizations for assistance.

8. Wade Smith has been winning cases and receiving accolades for his professionalism and civility since he first started practicing law. But Jim Blackburn tells a story about Wade that we can all learn from and admire. Jim was with the United States Attorney's Office, and he and Wade were on opposite sides in federal court. Jim used all of his preemptory challenges, and a juror was seated who would have been devastating to the prosecution. Jim tried to remove the juror for cause, but the judge denied the request. Jim knew that he had no chance with that juror. Wade, instead of just sitting and gloating over his good fortune, recognized that another lawyer was in trouble, and that if he did nothing, he would have an unfair advantage. Wade asked the judge if he and Jim could approach the bench and Wade then offered to give Jim one of his remaining challenges. The judge allowed it and said it was one of the greatest acts of professionalism he had ever seen.

9. When you hear the words Duke Lacrosse Case, you probably do not think of professionalism. However, there were acts of professionalism in that case from which we all can learn. Tom Keith and the District Attorney's Conference contacted the district attorney who was handling the case on many occasions to offer assistance and to suggest that he alter his course of conduct. This DA would not accept advice or consult with more experienced DAs who were willing to help him reevaluate the case. Joe Cheshire, Brad Bannon, and many other fine defense attorneys in that case reminded us to believe in our clients, to not leave any stone unturned or piece of evidence unexamined, and to not let the sensationalism of the press overcome the presumption of innocence. Attorney General Roy Cooper was willing to step in and declare the Duke lacrosse players innocent and dismiss all charges. Katherine Jean and Doug Brocker prosecuted the case on behalf of the State Bar in order to have the law license of this DA revoked. As difficult as the case was for all concerned, we can all be proud of the way our legal system allowed truth and justice to prevail in the end.

10. Remember basic professionalism concepts and core values that will benefit you and your clients:

- Always take the high road - it is not always easy but will serve you well in the end.
- No More than 24 - solve the number one complaint with the State Bar every year by returning each phone call within 24 hours. If you are in trial or out of town, have someone else in the firm return the call for you.
- Treat every client as if he or she is the most important client in the office, no matter what type of case it is.
- Don't criticize judges and lawyers in front of clients - clients will think they can do the same thing and it will make it easier to criticize you, as well.
- Memorable judges and lawyers are the ones who either do it very well or very poorly—be in the group that does it very well.
- Place the goodwill of the profession and pro bono service above self-interest—follow John McMillan's lead under Rule 6.1 and perform over 50 hours of pro bono service each year.
- First impressions are lasting impressions—develop a reputation as a lawyer who knows the law and who does not try to bend the law to win at all costs.
- Be passionate about the legal profession and remember John W. Davis' quote about what we do as lawyers:

> *True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures - unless as amateurs for our own principal amusement. There is little of all that we do which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men's burdens and by our efforts we make possible the peaceful life of men in a peaceful state."*

Thank you to Chief Justice Sarah Parker, and former Chief Justices Burley Mitchell, Henry Frye, and Beverly Lake for their commitment to professionalism and their continued support of the Chief Justice's Commission on Professionalism. Also, special thanks to the court of appeals Chief Judge John Martin and former Chief Judge Sid Eagles for their strong commitment to professionalism.

If you know of a professionalism story that you would like to share with other members of the Bar, please contact Mel Wright at the CJCP at (919) 890-1455. ■

If you are aware of unprofessional conduct by a lawyer or judge and you think a confidential intervention may help, please contact Mel Wright at the NC Chief Justice's Commission on Professionalism at (919) 890-1455 or email Melvin.F.Wright@nccourts.org. We also solicit members to share their experience of successful resolution of unprofessional contact and positive stories of lawyers acting professionally.

Client Security Fund Reimburses Victims

At its April 15, 2010 meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $302,000.00 to four clients who suffered financial losses due to the misconduct of North Carolina lawyers. The board also received information on four claims filed against Michelle Shepherd pursuant to an expedited process adopted by the board in July 2008 in which its counsel could approve reimbursement of title insurance premiums retained by Shepherd that were never paid to a title insurance company. The four expedited claims paid since the last board meeting totaled an additional $1,222.25.

The new payments authorized were:

1. An award of $2,000.00 to a former client of Fredrick Pierce of Raleigh. The board found that Pierce was retained to represent the client in a civil matter. Pierce failed to provide any valuable legal services for the fee paid. Pierce was suspended on February 27, 2009. The board previously reimbursed five other Pierce clients a total of $4,000.00.

2. An award of $100,000.00 to former clients of Michelle Shepherd of West Jefferson. The board found that Shepherd was retained to handle a refinance closing for a couple. From the loan proceeds, Shepherd failed to pay off the clients' two existing mortgages with the refinance lender and failed to pay down a home equity line with another lender. Shepherd misappropriated the loan proceeds. Shepherd's trust account balance was insufficient to pay all her clients' obligations due to her misappropriation. Shepherd was disbarred on July 25, 2008. The refinance lender reached an agreement with the couple to cancel its two earlier deeds of trust and reduce the new loan's balance in recognition of the couple's increased indebtedness to the home equity lender. The refinance lender also reached an agreement with the couple and the board on how any assets from Shepherd's bankruptcy would be applied.

3. An award of $100,000.00 to former clients of Michelle Shepherd. The board found that Shepherd was retained to handle a refinance closing for a couple. Shepherd failed to pay off the clients' existing loans with the refinance lender from the closing proceeds. Shepherd misappropriated the funds. The refinance lender reached an agreement with the couple to cancel the deeds of trust securing the earlier mortgages with that lender. The refinance lender also reached an agreement with the couple and the board on how any assets from Shepherd's bankruptcy and a related adversary proceeding would be applied.

4. An award of $100,000.00 to former clients of Michelle Shepherd. The board found that Shepherd was retained to handle a refinance closing for a couple. Shepherd failed to pay off the clients' existing loan with the refinance lender and failed to make other proper disbursements from the closing proceeds. Shepherd misappropriated the closing funds. The board further authorized its counsel to negotiate a restructured agreement proposed by the refinance lender concerning cancellation of that lender's prior deed of trust and how assets from the Shepherd bankruptcy would be applied. Prior to this meeting, the board had reimbursed eleven applicants a total of $302,857.76 for claims considered by the board. In addition, the board had previously reimbursed 89 clients a total of $34,037.71 by the expedited payment method. Thus, the board has now awarded a total of $638,117.72 to Shepherd's former clients. ■

In Memoriam

Thomas F. Adams Jr.
Raleigh

Patricia L. Arcuri
Asheville

Phyllis C. Barrett
Chapel Hill

Anthony M. Brannon
Raleigh

John J. Burney Jr.
Wilmington

Robert G. Byrd
Chapel Hill

Joy A. Ciriano
Burlington

Nathaniel E. Clement II
Chapel Hill

J. Wesley Covington
Durham

Jackie D. Drum
Gastonia

Trudy A. Ennis
Greensboro

James L. Griffin
Chapel Hill

John W. Halstead Jr.
Elizabeth City

Ambrose J. Hinnegan
Winston-Salem

Mark P. Klein
Boca Raton, FL

James D. Little
Raleigh

Charles B. Markham
Durham

Howard C. McGlohon
Asheville

August L. Meyland Jr.
Greensboro

Leon Olive
Charlotte

Lloyd K. Rector
Winston-Salem

Robert H. Swiggett Jr.
Burlington

Howard F. Twiggs
Raleigh

July 2010 Bar Exam Applicants

The July 2010 Bar Examination will be held in Raleigh on July 27 and 28, 2010. Published below are the names of the applicants whose applications were received and entered in the Board's tracking system on or before April 21, 2010. Members are requested to examine it and notify the board in a signed letter of any information which might influence the board in considering the general fitness of any applicant for admission. Correspondence should be directed to Fred P. Parker III, Executive Director, Board of Law Examiners, PO Box 2946, Raleigh, NC 27602.

Regan Adamson
Winston-Salem, NC
John Albert
Kernersville, NC
Padowithz Alce
Raleigh, NC
Aindrea Alderson
Winston-Salem, NC
Elizabeth Alexander
Greenville, SC
Keith Allen
Charlotte, NC
Brady Allen
Charlotte, NC
Catherine Alley
Charlotte, NC
Africa Dalton Alston
Winston-Salem, NC
Jeanne Altarejos
Charlotte, NC
Jeremy Scott Ament
Fayetteville, AR
Amanda Anders
Huntersville, NC
Syretta Anderson
Columbia, SC
Christopher Anderson
Winston-Salem, NC
James Anderson Jr.
Rock Hill, SC
Kristy Andraos
Kernersville, NC
Barbara Andrews
Salisbury, NC
Robert Annechiarico
Charlotte, NC
John Appler
Chapel Hill, NC
Laura Ardrey
Lillington, NC
Tiffany Arrott
Chicago, IL
Derrick Arrowood
Nebo, NC
Adam Arthur
High Point, NC
Heather Ashe
Raleigh, NC
Brandon Atwater
Washington, DC
Andrea Atwell
Birmingham, AL
Donnica Rhashun August
Greensboro, NC
Linsy Aul
Chapel Hill, NC
Katy Aultman
Winston-Salem, NC
Christopher Austin
New Ellenton, SC
Carol Austin
Charlotte, NC
Seth Avant
Greensboro, NC
Amanda Avery
Chapel Hill, NC
Steven Back
Rutherfordton, NC
Michael Douglas Baker
Oak Ridge, NC
Brian Baker
High Point, NC
Ruth Baldwin
Chapel Hill, NC
Erika Bales
Durham, NC
Terence Barber
Durham, NC
Christopher Barbour
Raleigh, NC
Anne Barham
Oxford, MS
William Barham
Pine Level, NC
Andre Barnett
Huntersville, NC
Deborah Barnette
Cary, NC
Joseph Barney
Badin, NC
Natasha Barone
Winston-Salem, NC
Evan Barr
Harrisburg, NC
Daria Anne Barrett
Reidsville, NC
Lindsay Bass
Chapel Hill, NC
John Bassett IV
Chapel Hill, NC
Caroline Batchelor
Chapel Hill, NC
Aaron Bates
Lexington, NC
Sarah Batson
Columbia, SC
Ronald Bauer
Raleigh, NC
Imogen Baxter
Chapel Hill, NC
Heather Beam
Raleigh, NC
Allison Becker
New York, NY
Daniel Becker
Raleigh, NC
Christina Marie Beckmann
Sanford, NC
Sondra Beeson
Raleigh, NC
Cindy Bembry
Raleigh, NC
Sarah Bencini
Chapel Hill, NC
Gregory Bentley
Wilmington, NC
Aaron Berlin
Winston-Salem, NC
Heidi Bernstein
Pinehurst, NC
Meghan Best
Benson, NC
Matthew Beukema
Athens, GA
Christine Bischoff
Arlington, VA
Megan Black
Raleigh, NC
Christina Blackburn
Durham, NC
Wade Blackwell
Browns Summit, NC
Jennifer Blair-Smith
Charlotte, NC
Jeannie Blake
Troy, NC
Oscar Blanks III
Durham, NC
Ian Bloom
Fuquay-Varina, NC
Donna Blyskal
Raleigh, NC
Charles Boardman
Charlotte, NC
Megan Bode
Winston-Salem, NC
Noelle Boepple
Lansing, MI
Dan Boggs
Polkville, NC
Peter Bolac
Durham, NC
Sarah Bolling
Atlanta, GA
Arrington Booker
Durham, NC
Danielle Boram
Chapel Hill, NC
Banks Bostian
Gastonia, NC
Kirsten Bowden
Washington, DC
Kenneth Bower
Clemmons, NC
Elisa Bowman
Coats, NC
Celeste Boyd
Overland Park, KS
Natalie Boyd
Cleveland, NC
Megan Boyle
Winston-Salem, NC
William Bozin
Athens, GA
Zachary Branch
Winston-Salem, NC
Paris Branch-Ramadan
Durham, NC
Rebecca Branz
Oak Ridge, NC
Henry John Brathwaite
Raleigh, NC
Robert Braxton
Gainesville, FL
Brian Breedlove
Carrboro, NC
Rhyan Breen
Rocky Mount, NC
Kevin Brekka
Cranston, RI
Andrew Brendle
Raleigh, NC
John Brickley
Columbia, SC
Robert Bridges
Raleigh, NC
Gary Britt II
Cayce, SC
Samuel Brittain
Greensboro, NC
Victor Broccoli
New Orleans, LA
Jefferson Brooks
Greensboro, NC
Caleb Brown
Norman, OK
Bernard Brown II
Greensboro, NC
Scott Browne
Columbia, SC
Tabitha Bryant
Morrisville, NC
Andrew Bullard
Lansing, MI
Bennita Bullett
Cary, NC
Anna Buonya
Greensboro, NC
Anna Burdecki
Charleston, SC
Marcus Burrell
Clayton, NC
James Burton
Columbia, SC
Ryan Butler
Greensboro, NC
Claudia Butts
Garysburg, NC
Elizabeth Bux
Medina, OH
Akeisha Byer
Orlando, FL
Bryan Byerly
Chapel Hill, NC
Asya Bynum
Charlotte, NC
Alana Byrd
Durham, NC
Deidra Byrd
Columbia, SC
Rebecca Cacaci
Greensboro, NC
Katherine Cadwallader
Greensboro, NC
Rebecca Cage
Greensboro, NC
Leon Cain II
Raleigh, NC
Jazmin Gabrielle Caldwell
Charlotte, NC
Adrianne Caldwell
Cincinnati, OH
Hannah Camenzind
Chapel Hill, NC
Lawrence Cameron
Raleigh, NC
Jeffrey Cannon
Winterville, NC
Andrew John Carmine
Wilmington, DE
Taylor Carraway
Walstonburg, NC
Matthew Carrier
Knoxville, TN
Caitlin Carson
Chapel Hill, NC
Brian Caruth
Durham, NC
Kelly Case
Charlotte, NC

Ashley Cassels
Winston-Salem, NC
Chadwick Casstevens
Mount Airy, NC
John Causey
Charlotte, NC
Elizabeth Cayton
Oxford, OH
Jessica Cecchini
Grundy, VA
Mary Cece
Raleigh, NC
Lesley Cedrone
Brookline, MA
Jennifer Chandler
Charlotte, NC
Jennifer Chapman
Macon, GA
Sharifa Charlery
Hillsborough, NC
Serah Chavda
Virginia Beach, VA
Elizabeth Cheng
Chapel Hill, NC
Parker Chesnutt
Raleigh, NC
Benjamin Chesson
Winston-Salem, NC
Brian Choi
Chapel Hill, NC
Amanda Christensen
Newport News, VA
Daniel Chun
Durham, NC
Kimberley Church
Durham, NC
Jennifer Cianciolo
Charlotte, NC
Miriam Clark
Chapel Hill, NC
Jacob Clauson
Durham, NC
Carleton Clauss
Durham, NC
Laurel Clemence-Schreiner
Raleigh, NC
Semada Clements
Durham, NC
Andrew Clifford
Tallahassee, FL
Christina Clodfelter
Statesville, NC
Laura Cobb
Jackson, TN
Lee Cobb
Mooresville, NC
Matthew Cochran
Raleigh, NC
Christine Blythe Coffron
Charlotte, NC
Deanna Coleman
Durham, NC
Tobias Coleman
Durham, NC
Christina Colley
Goldsboro, NC
Mary Beth Collins
Baltimore, MD
Andrea Coloff
Durham, NC
Burtis Conley III
Kernersville, NC
Ryan Connolly
Durham, NC
Yolanda Lynn Conrad
Fuquay Varina, NC
Mary Cook
Durham, NC
Kristin Cook
Kernersville, NC
Samantha Cools
Indianapolis, IN
Nathan Cooper
Chapel Hill, NC
Thomas Cooper
Atlanta, GA
Jessica Cooper
Greensboro, NC
Brenda T. Coppede
Matthews, NC
Stephen Coppola
Raleigh, NC
Lawrence Correll
Oxford, MS
Rebecca Costello
Melrose, MA
Andrea Covington
Charlotte, NC
Anastasia Cowan
Columbus, OH
Brian Cox
Chapel Hill, NC
Sarah Cox
Pittsburgh, PA
Christopher Craft
Raleigh, NC
Kizzy Crawford Heath
Raleigh, NC
Mary Crawley
Raleigh, NC
Andrew Crook
Raleigh, NC
Emily Culp
Chapel hill, NC
Samuel Currin II
Raleigh, NC
Alexandra Cury
Asheville, NC
Luke Dalton
Raleigh, NC
Dara Damery
Savoy, IL
James Tyler Dancy
Kannapolis, NC
Karen Daniels Dane
Manteo, NC
Richard Daniel
Highland Heights, KY
Cassandra Darkes
Durham, NC
Stephanie D'Atri
Durham, NC
David Davidjohn
Lynchburg, VA
Michael Davis
High Point, NC
Anna Davis
Durham, NC
Jerad Davis
Athens, GA
Nicolas De Castro
Little Rock, AR
Kelly Dees
Greensboro, NC
Philip Deily
Pittsburgh, PA
Jessica Delancy
Binghamton, NY
India Dennis
Durham, NC
Kassie Dent
Columbus, OH
Gabrielle DeRosa
Durham, NC
Ravi Desai
Durham, NC
Charlyne Marie DeVane
West End, NC
Sharif Deveaux
Durham, NC
Mariana DeWeese
Raleigh, NC
Jatinder Dhillon
Chapel Hill, NC
Dina Mary Di Maio
Raleigh, NC
Andrew Dickens
Winston-Salem, NC
Jessica Dickerson
Chapel Hill, NC
Raymond DiGuiseppe
La Jolla, CA
Laura Dildine
Greensboro, NC
Mary Dimont
Elon, NC
Amanda Dion
University Park, FL
Jennifer Dixon
Summerfield, NC
Gregory Dixon
Medford, NJ
Amanda Dixson
Dahlonega, GA
Robert Dodson
Warrenton, NC
Daniel Donahue
Charlotte, NC
Ryanne Drogos
Cary, NC
Dannel Duddy
Richmond, VA
Jamie Duncan
Greensboro, NC
Catayah Duncan
Winston-Salem, NC
Craig Dunham
Dayton, OH
Bryan Dunkum
Greensboro, NC
Anna Dunkum
Greensboro, NC
Nicole DuPre
Winston-Salem, NC
David Duquette
Minneapolis, MN
Tina Eagle
Salisbury, NC
Ryan Early
Durham, NC
Michael Easley Jr.
Raleigh, NC
Annie Edmond
Durham, NC
Donald Edmonds
Waxhaw, NC
Merrell Edney Jr.
Asheville, NC
Al Ehsani
Reseda, CA
Benjamin Eisner
Raleigh, NC
Michael Eldredge
Greensboro, NC
Matthew Ellington
Raleigh, NC
Jeffrey Ellingworth
Charlotte, NC
Jonathan Ellis
Philadelphia, PA
Waneta Ellis
Greensboro, NC
Justin Enecks
Greensboro, NC
Shannon English
Apex, NC
Elese Epps
Winston-Salem, NC
Joshua Ernst
Winston-Salem, NC
Justin Ervin
Greensboro, NC
Aimee Escueta
Chapel Hill, NC
Ramina Esmaeili
Sherman Oaks, CA
Gregory Evans
Lexington, NC
Faith Everett
Durham, NC
John Faircloth
Jackson, NC
Sherah Fannin
Raleigh, NC
Yasmin Farahi
Charlotte, NC
Luke Farley
Winston-Salem, NC
Gina Marie Farrar
Cary, NC
Lauren Felder
Sumter, SC
Ashley Ferrell
Durham, NC
John Fetner
Columbia, SC
Brett Few
Charlotte, NC
Ian Fiske
Charlottesville, VA
John Fitzpatrick
Raleigh, NC
Lisa Fitzpatrick
Greenville, NC
Patricia Fitzsimmons
Durham, NC
Mollie Flanagan
Hillsborough, NC
Rebecca Fleishman
Chapel Hill, NC
Jeffrey Fleming
Greensboro, NC
Milton Fletcher
Winston-Salem, NC
Gordon-Andrew Fletcher
Orlando, FL
Carol Fletcher
Shelby, NC
Maria Floren
Charlotte, NC
Meredith Flowe
Durham, NC
Christopher Floyd
Raleigh, NC
Andrew Flynt
Carrboro, NC
April Flythe
Raleigh, NC
Andrew Fogarty
Columbia, SC
Paul Fogleman
Columbia, SC
Stephanie Foltz
Durham, NC
Charmaine Ford
Grundy, VA
Brandee Ford
Raleigh, NC
Noah Foreman
Henrico, VA
Bradley Fortier
Raleigh, NC
Andrew Foster
Chapel Hill, NC
Bryan Foster
Madison Heights, VA
Kyle Fountain
Winston-Salem, NC
Crystal Foushee
Grundy, VA
Carrie Renee Fowler
Charlotte, NC
Margaret C. Fox
Chocowinity, NC
Carol Foxx
Brooklyn, NY
Anabel Franceschini Rosa
Durham, NC
Daniel Franklin
Durham, NC
Andrew Freeman
Winston-Salem, NC
Elizabeth Freeman
Athens, GA
Lindsey Frye
Lincolnton, NC
ChenFan Fu
Winston-Salem, NC
Erin Funderburk
Chapel Hill, NC
Andrew Furuseth
Raleigh, NC
Gretchen Futrell
Chapel Hill, NC
David Garcia
Winston-Salem, NC
Grant Gardner
Notre Dame, IN
James Garner
Virginia Beach, VA
Edward Garrett
Winston-Salem, NC
Kelley Gates
Chapel Hill, NC
Erica Genthner
Glendale, CA
Renee Gerber
Washington, DC
Jonathan Gibson
Cary, NC
Ryan Gibson
Raleigh, NC
D'Andrea Gipson
Charlotte, NC
Seth Glazer

Chapel Hill, NC
Philip Glenn
Lexington, VA
Kelly Godwin
Clayton, NC
John Godwin
Dunn, NC
Camilla Goodchild
Greensboro, NC
Emily Goodman
Coral Gables, FL
Carolyn Goodridge
Durham, NC
Julie Gorman
Winston-Salem, NC
Robert Gorman
Chapel Hill, NC
Jeffrey Goss
Charlotte, NC
Kristopher Gould
Chapel Hill, NC
Nitin Goyal
Florham Park, NJ
Toni Grace
Winston-Salem, NC
Lisa Graff
Charlottesville, VA
Anissa Graham-Davis
Hillsborough, NC
Lillette Granade
Tunbridge, VT
John Gravante III
Miami, FL
Carissa Ann Graves
Burlington, NC
Cornelius Graves
Baton Rouge, LA
Christopher Gray
Grundy, VA
Precious Green
Hopkins, SC
Kristen Greene
Chapel Hill, NC
Michelle Greene
Durham, NC
Pulvinder Grewal
West Bloomfield, MI
Jeremy Griffin
Stanfield, NC
James Griffin III
Raleigh, NC
Sarah Grimme
Tampa, FL
John Griner
Durham, NC
Marion Groat
Winston-Salem, NC
Brent Groce
Raleigh, NC
Amber Grooms
Jacksonville, FL
Courtney Grosenick
Columbia, SC
David Gross
Chapel HIll, NC
Brendan Groves
Winston-Salem, NC
Angela Guarin
Raleigh, NC
Kimyada Chantae Guevara
Belmont, NC
Gloria Gyamfi
Norman, OK
Mary Elizabeth Hadley
Washington, DC
Judith Haensel
Winston-Salem, NC
Jennifer Haglund
Durham, NC
Charlotte Hall
Carrboro, NC
Katie Hall
Lexington, NC
Holly Hammer
Santa Monica, CA
Austin Hampton
Chicago, IL
Justin Hampton
Clayton, NC
Nolan Hancock
Collettsville, NC
Andrea Hanner
Jacksonville, FL
David Hansen
Chapel Hill, NC
Jennifer Hansen
Winston-Salem, NC
Ashley Hare
Chapel Hill, NC
Thomas Harper
Raleigh, NC
Katherine Harrell
Kitty Hawk, NC
Naima Harris
Charlotte, NC
Jeremy Hart
Raleigh, NC
Erin Hartnett
Winston-Salem, NC
Channing Hawkins
Washington, DC
Sonny Haynes
Holly Springs, NC
John Heagarty
Raleigh, NC
Teresa Hebert
Charlotte, NC
Katherine Henderson
Asheboro, NC
Thomas Hennessey
Durham, NC
Tanielle Henriques
Hendersonville, TN
Carlos Hernandez
Durham, NC
Candace Heron
Wilson, NC
Oneshia Herring
Durham, NC
John Hester Jr
Greensboro, NC
Timothy Hester Jr.
Pittsboro, NC
Regina Hicks
Durham, NC
Clinton Hicks II
Matthews, NC
Roger Higgs
Provo, UT
Christopher Hill
Raleigh, NC
Tanea Hines
Charlotte, NC
Elizabeth Hinshaw
Charlottesville, VA
Lauren Hinzey
Pittsburgh, PA
Heather Hobgood
Cary, NC
Emma Hodson
Greenville, NC
Andrew Hogan
Whitsett, NC
William Holby
Nashville, TN
Jane Honeycutt
Williamsburg, VA
Christopher Hood
Apex, NC
Randall Hoose
Charlotte, NC
Bryan Hopp
East Lansing, MI
Paul Horton
Charlotte, NC
Parisa Houshmandpour
Greensboro, NC
Timothy Howard
Durham, NC
Sally Howard
Lewisville, NC
Meghan Howard
Greensboro, NC
Lora Howard
Sophia, NC
Kim Howes
Raleigh, NC
Regenia Hubbard
Durham, NC
Adglon Hudson
Newton, NC
Harriet Huell
Durham, NC
John Hufham
Matthews, NC
Rachel Hughes
Kings Mountain, NC
Melissa Hulett
New York, NY
Debna Hunt
Winston-Salem, NC
Kimberley Hunter
Alexandria, VA
Claire Hunter
Chapel Hill, NC
Jill Hutchens
Raleigh, NC
Teri Hutchens
Statesville, NC
In Joon Hwang
Durham, NC
Mark Ihnat
Durham, NC
Stuart Innes
Barco, NC
Meagan Ivanov
Fuquay Varina, NC
Randy Ivie
Winston-Salem, NC
Marc Jacobs
Durham, NC
Jill Jacobson
Fredericksburg, VA
Paula Jahn
San DIego, CA
Samuel Luis Janniere
Charlotte, NC
Miller Jefferson
Chapel Hill, NC
Nehemiah Jefferson
Charlotte, NC
Michael Jefferson
Decatur, GA
Lauren Jeffries
Greensboro, NC
Consuela Jenkins
Durham, NC
Ian Jewell
Cary, NC
Ana-Cristina Jimenez
Pfafftown, NC
Mason John
Charlotte, NC
Amy Johnson
Knightdale, NC
Amanda Johnson
Cary, NC
Ryen Johnson
Durham, NC
Kathryn Johnson
Chapel Hill, NC
Teal Johnson
Greenville, SC
Carnice Johnson
Hampstead, NC
Nicholas Johnson
Williamsburg, VA
Melvin Johnson III
Hampstead, NC
Ronald Johnson Jr
Bloomington, IN
Janet Jones
Chapel Hill, NC
Brian Jones
West Lebanon, NH
Michael Jones
Chrarleston, SC
Anthony Jones
Williamsburg, VA
Katherine Jones
Raleigh, NC
Justin Julian
Winston-Salem, NC
Lindsey Kabbes
Whitsett, NC
Seema Kakad
Durham, NC
Houtan Kargar
Durham, NC
Christopher Karlsson
Raleigh, NC
Nicholas Karr
Lynchburg, VA
Thomas Kaufmann
Charlotte, NC
Chrystal Kay
Coats, NC
Joseph Daniel Kaye
Charlotte, NC
Theodoros Kazakos
Lewisville, NC
Cassie Keen
Jamestown, NC
Michael Hugh Kelly
College Park, MD
Jonathan Kelly
Raleigh, NC
Mary Kelly
Durham, NC
Lauren Kelly
Raleigh, NC
Karen Kenney
Franklin, NC
Timothy Keslar
New Orleans, LA
Stratford Kiger
Charlotte, NC
Jaclyn Kiger
Atlanta, GA
Ashanti King
Durham, NC
Robert Kirkland
Charleston, SC
Julie Kirstein
Fairview, NC
Andrew Kisala
Durham, NC
Susannah Knox
Montclair, NJ
Steven Koch
Carrboro, NC
Douglas Koenig
Okemos, MI
John Koesters
Winston-Salem, NC
Wade Kolb III
Durham, NC
Elijah Kovick
Efland, NC
Nicole Kozak
Durham, NC
David Kronenfeld
Clayton, MO
William Krueger Jr.
Carrboro, NC
Jessica Kruger
Raleigh, NC
Gregory Kupka
Winston-Salem, NC
Caroline LaFiura
Raleigh, NC
Sandy Lam
Raleigh, NC
Megan Lambert
Cary, NC
Andrea Lammonds
Carrboro, NC
Laura Lancaster
Charlotte, NC
Morgan Laurie
Charlotte, NC
Sarah Lauterbach
Long Beach, NY
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Durham, NC
Tod Leaven
Chapel Hill, NC
Kirk LeCureux
Gainesville, FL
Nooree Lee
Chapel Hill, NC
Kirsten Lee
Durham, NC
Brandon Leebrick
Chapel Hill, NC
Justin Lefkowitz
Carrboro, NC
Daniel Lehrer
Chapel Hill, NC
Sara Leuschke
Austin, TX
Adam Levy
Greensboro, NC
Kristen Lewis
Chapel Hill, NC

Sarah Lewis
Chapel Hill, NC
Takiya Lewis
Durham, NC
Kristen Lewis
Fort Mill, SC
Phillip Liles
Raleigh, NC
Venus Liles
Raleigh, NC
Diane Littlejohn
Durham, NC
Jena Livingston
Raleigh, NC
Kahlida Lloyd
Durham, NC
Lauren Loftis
Chapel Hill, NC
Sarah Long
Chapel Hill, NC
Rebecca Long
Durham, NC
William Long Jr.
Statesville, NC
Daniel Longcore
Chapel Hill, NC
Ashley Lorance
Richmond Hill, NY
Brian Love
Cary, NC
David Luzum
Chapel Hill, NC
Jessica Lyles
Winston-Salem, NC
Shannon Lynch
Archdale, NC
Brandy Mace
Lexington, KY
John-Michael Machuca
Durham, NC
Katharine MacKenzie
Carlisle, PA
Corey MacKinnon
Charlotte, NC
John Maddux
Raleigh, NC
Andrea Madle
Raleigh, NC
Guiselle Mahon
Charlotte, NC
Johnna Main
Atlanta, GA
Wajeeha Malik
Metuchen, NJ
Lauren Mangum
Durham, NC
Elizabeth Manno
Panama City, FL
Benjamin Many
Tuscaloosa, AL
Kathryn Marchesini
Durham, NC
Lyndsey Marchman
Winston-Salem, NC
Peter Mariani
Chapel Hill, NC
Jameson Marks
Greensboro, NC
Taryn Marks
Decatur, GA
Elizabeth Marsh
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Andrew Marshall
Greensboro, NC
Meredith Marshburn
Raleigh, NC
Alexander Maslow
Columbia, SC
Cynthia Mason
Lexington, SC
Moulton Massey IV
Greenville, NC
Malcolm Matheson
Holly Springs, NC
David Mathis
Durham, NC
Nicholas Matlach
Silver Spring, MD
Lawrence Matthews
Winston-Salem, NC
Allen Mauldin
Whitsett, NC
Whitney Maxwell
Appomattox, VA
Dennis Maxwell Jr.
Lexington, VA
Ryan May
Bybee, TN
Kevin May
Willow Spring, NC
John Mays
Decatur, GA
Kristin McAbee
Greensboro, NC
Lori McArthur
Snow Hill, NC
David McArthur
Cary, NC
Kimberly McAuley
Charlotte, NC
William McCanless
Salisbury, NC
Nicole McConico
Durham, NC
John McCrary
High Point, NC
Laura McDonald
Matthews, NC
Elliot McDonald
Grundy, VA
Roger McDorman
Chapel Hill, NC
Heather McDowell
Raleigh, NC
Alison McGeary
Durham, NC
Quintin McGee
Chapel Hill, NC
Matthew McGregor
Saint Pauls, NC
Douglas McIntyre
High Point, NC
Joshua McIntyre
Durham, NC
James McKell Jr.
Apex, NC
Danielle McLean
Chapel Hill, NC
Thomas McMillan Jr.
Greensboro, NC
Michael McMullan Jr.
Cary, NC
Bret McNabb
Clayton, MO
Kristen McNeal
Henrico, VA
Nancy McPherson
Pinole, CA
Thomas McPherson III
Winston-Salem, NC
Branson McRae
Greensboro, NC
Robert McRight
Nashville, TN
Matthew Meany
Raleigh, NC
Jonathan Meek
Charlotte, NC
Ankur Mehta
Tallahassee, FL
Marc Meister
Maumee, OH
Jennifer Meksraitis
Lake Worth, FL
Kyle Melvin
Grundy, VA
Genevieve Mente
Boone, NC
Lauren Metcalf
Kernersville, NC
Samuel Metzler
Winston-Salem, NC
John Mickler
Charlotte, NC
Hannah Miller
Hickory, NC
Anna Miller
Pittsboro, NC
Rachael Miller
Charlotte, NC
Ny'Keia Miller
Tuscaloosa, AL
Brooke Millman
Raleigh, NC
Brandy Mills
Winston-Salem, NC
Jeremy Milton
Garner, NC
Jason Minnicozzi
Raleigh, NC
Tyler Moffatt
Greensboro, NC
Amanda Moffatt
Greensboro, NC
Anisa Mohanty
Richmond, VA
Emily Monnig
Ooltewah, TN
Phillip Montague
Knightdale, NC
Sh'Myra Moore
Des Moines, IA
Matthew Harper Moore
Durham, NC
Matthew Brett Moore
High Point, NC
Jason Moran-Bates
Angier, NC
Frederick Moreno
Cary, NC
William Morgan
Cary, NC
Gregory Morgan
Raleigh, NC
William Morgan III
Winston-Salem, NC
David Morgen
Winston-Salem, NC
Hunter Morris
Greenville, SC
John Morris
Greensboro, NC
Bryant Morrison
Charlotte, NC
David Morrow II
Burlington, NC
Shauna Moser
Winston-Salem, NC
Nina Moulas
Charlotte, NC
Ngonidzaishe Mufuka
Charlotte, NC
Mueni Muli
Fuquay Varina, NC
Colleen Mullan
huntersville, NC
Maxwell Multer
Morrisville, NC
Kevin Murphy
Athens, GA
Andrew Murphy
Morrisville, NC
Scott Murray
Chapel Hill, NC
Kimberly Murrell
Morrisville, NC
Christopher Musial
Greensboro, NC
Daniel Nash
Greensboro, NC
Tiffany Naylor
Salemburg, NC
Andrew Neal
Raleigh, NC
Laura Neal
Raleigh, NC
Sarah Neely
Asheboro, NC
Christopher Neeson
Charlotte, NC
Virginia Neisler
Durham, NC
Annie Nelson
Chapel Hill, NC
Preston Nelson
Greensboro, NC
Charlene Brown Nelson
Clayton, NC
John Newby Jr.
Raleigh, NC
Dustin Nichols
Key Largo, FL
Christopher Nichols
Raleigh, NC
Justin Nichols
Apex, NC
Bryan Nichols
Raleigh, NC
Patricia Niebauer
Whispering Pines, NC
Laura Niedosik
Charlotte, NC
Andrea Nieves
New York, NY
Howard, Jr. Nordby
Pittsboro, NC
Douglas Noreen
Apex, NC
Daniel Nunn
Raleigh, NC
Brian Nyland
Morrisville, NC
Jennifer Oakley
Cary, NC
Sean O'Donnell
Fuquay-Varina, NC
Tamara Oh
Raleigh, NC
Daniel O'Malley
Pittsburgh, PA
Agu Onuma
Durham, NC
Jonathan Ophardt
Durham, NC
Zachary John Orth
Chapel Hill, NC
Osayimwense Osar-Emokpae
Columbia, SC
Justin Osborn
Edmond, OK
Brian O'Shaughnessy
Fuquay-Varina, NC
Kyle Ott
Fletcher, NC
Caitlin Owens
Greensboro, NC
Stephanie Owens
Raleigh, NC
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East Lansing, MI
Renita Packard
Fuquay-Varina, NC
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Coralville, IA
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Alexandra Panosh
Charlotte, NC
Theresa Paparella
Raleigh, NC
George Parker
Arlington, VA
Shawn Parker
Raleigh, NC
Phillip Parker Jr.
Raleigh, NC
Gregory Parks
Denver, NC
James Parks
Jackson, MS
Jennifer G. Parser
Raleigh, NC
Aster Patel
Bloomington, IN
Nicole Patterson
High Point, NC
Kristy Patton
Sanford, NC
Jonathan Patton
Durham, NC
Jamie Paulen
Durham, NC
Kyle Payne
Charlotte, NC
Jennifer Payne
Winston-Salem, NC
Caroline Payseur
Winston-Salem, NC
Brooks Pearson
Chapel Hill, NC
Leslie Pedernales
Charlotte, NC
Jessie Peed
Chapel Hill, NC
Lynn Percival IV

Ralegh, NC
Claudia Perez-Hurtado
Raleigh, NC
Heidi Perlman
Winston-Salem, NC
Savaun Perry
Durham, NC
Jonathan Perry
Greensboro, NC
Daniel Peterson
Chapel Hill, NC
Chasidy Nicole Phelps
Winston-Salem, NC
Matthew Phillips
Raleigh, NC
Herbert Phillips
Chapel Hill, NC
Misty Piekaar
Durham, NC
Jonathan Pierce
Oxford, MI
Neal Pierotti
Taylors, SC
Megan Pinkney
Winston-Salem, NC
Dalita Piper
Washington, DC
Sharon Rena Pittman
Raleigh, NC
Dustin Pittman
Elm City, NC
Maureen Pitts
Clayton, NC
Christa Pletcher
Winston-Salem, NC
Jose Pocasangre
Bloomington, IN
Charles Poe III
Greensboro, NC
Emily Diana Pontious
Raleigh, NC
Amy Ponton
Raleigh, NC
Jessica Poole
Morrisville, NC
Tara Powers
Charlotte, NC
Jade Preshia
Hempstead, NY
William Price
Mayodan, NC
Rose Proto
Charlotte, NC
Maria Pruszynska
Harrisburg, NC
Paul Puryear Jr.
Pittsboro, NC
Sayera Qasim
Charlotte, NC
Robert Quick II
Fayetteville, NC
Taiyyaba Qureshi
Apex, NC
Brian Rabinovitz
Durham, NC
Amanda Raflo
Charlotte, NC
Caroline Raines
Columbia, SC
Nader Raja
Winston-Salem, NC
Tonya Randolph
Clemmons, NC
Nancy Rapp
Advance, NC
Dustin Rapp
Winston-Salem, NC
Melanie Raubach
Winston-Salem, NC
Stephen Rawson
Durham, NC
Jonathan Raymer
Winston-Salem, NC
David Rea
Winston-Salem, NC
Kathryn Reed
Charlottesville, VA
Paul Reed
Durham, NC
Christopher Reed
Columbia, SC
Teresa Reed
Knightdale, NC
Jonathan Reich
Durham, NC
Miranda Reich
Winston-Salem, NC
Jarett Reid
Raleigh, NC
William Reiss
Winston-Salem, NC
Jennifer Reutter
Greensboro, NC
Christia Rey
Williamsburg, VA
Stephanie-Lyn Reynolds
Valparaiso, IN
Alexis Rhoda
Brookfield, WI
Khalif Rhodes
lake orion, MI
Courtney Rhodes
Lake Orion, MI
Kristin Rhodus
Jacksonville Beach, FL
Carice Rice
Southern Pines, NC
Sonravea Richardson
Franklinton, NC
James Michael Richardson
durham, NC
Terriss Richardson
Durham, NC
Justin Richman
Winston-Salem, NC
Nefertari Rigsby
Birmingham, AL
Lila Riley
Greensboro, NC
Daniel Risku
Chapel Hill, NC
Meredith Ritchie
Morrisville, NC
David Ellis Roberts
Charleston, SC
Robert Robine
Winston-Salem, NC
Christina Robinson
Winston-Salem, NC
Carlos Gregory Rodriguez
Clemmons, NC
Latisha Roebuck
Durham, NC
Robert Roland IV
Raleigh, NC
Brian Romanzo
Charlotte, NC
Norma Saraid Roque-Harper
Hendersonville, NC
Sarah Rose
Raleigh, NC
Russell Rose
Wilson, NC
brandon roseman
Concord, NC
Eric Wade Rowell
Charlotte, NC
Brian Royster
Morrisville, NC
Crystal Russ
Durham, NC
Lauren Russell
Graham, NC
Tyler Russell
Durham, NC
Natasha Sanders
Charlotte, NC
Armine Amy Sarkissian
Glendale, CA
David Sartorio
Chapel Hill, NC
Crystal Satterwhite
Oxford, NC
Dane Scalise
Chapel Hill, NC
Kristina Scally
New London, NC
Emily Scarborough
Carrboro, NC
John Scarbrough
Durham, NC
Craig Schauer
Raleigh, NC
Grant Scheuring
Cary, NC
Blaine Schmidt
Chapel Hill, NC
Cali Schmitt
Durham, NC
Kristen Schneider
Winston-Salem, NC
Matthew Schrum
Charlotte, NC
Andrew Schulze
Lynchburg, VA
Christine Schwartz
Charlotte, NC
Jessica Scott
Raleigh, NC
Arick Sears
Richmond, VA
Christopher Sease
Salisbury, NC
Laura Seel
Greensboro, NC
Cheri Selby Pearson
Durham, NC
Albert Sergiacomi III
Newton, NC
Zachary Setzer
Matthews, NC
Siri Setzer
Chicago, IL
Susie Sewell
Winston-Salem, NC
Jessica Shaddock
Boston, MA
Vivek Shah
Cary, NC
Shantae Shahied
Carrboro, NC
Ashish Sharda
Greensboro, NC
Stephen Shaw
Greensboro, NC
Paula Shearon
Wilson, NC
Ashley Shelton
Greensboro, NC
Candice Shepard
Harrisburg, NC
Kevin Sherriff
Cary, NC
Thomas Shields
Winston-Salem, NC
Jae Hun Shin
Seoul
Courtney Shipp
Auburn Hills, MI
JoAnna Shoaf
Chapel Hill, NC
Brett Shockley
Lexington, VA
Alivia Sholtz
Durham, NC
Anna Short
Madison, WI
Neil Siegel
Durham, NC
Marian Siemering
Raleigh, NC
Candace Siler
Grundy, VA
Jerri Simmons
Winston-Salem, NC
Joshua Simmons
Greensboro, NC
Joshua Simpson
Hope Mills, NC
Elizabeth Simpson
New York, NY
Ross Simpson III
Greensboro, NC
Jeanette Sims
Durham, NC
Tyler Skitt
Waxhaw, NC
Emily Sloop
Raleigh, NC
David Elroy Smith
Davidson, NC
Brandie Smith
Winston-Salem, NC
Jonathan Smith
Raleigh, NC
Courtney Smith
Durham, NC
Daniel Smith
Durham, NC
Jessica Smith-Kaprosy
Carrboro, NC
Sarah Smyre
Harrisburg, NC
Timothy Snead
Raleigh, NC
Jessica Snowden
Lincoln, NE
Michael Solis
Durham, NC
Julie Solms
Durham, NC
Stefanie Sparks
Washington, DC
Meredith Specht
Lillington, NC
Margaret Speir
Winston-Salem, NC
Daniel Spiegel
Cambridge, MA
Eric Spier
Wilmington, NC
Jonathan Spoon
Durham, NC
Willie Spruill
Durham, NC
Hilary St. Louis
Cramerton, NC
William Starling Jr.
Clinton, NC
Kendra Stead
Chicago, IL
Gregory Seth Stephens
Durham, NC
Ralph Stevenson III
Rocky Mount, NC
Katherine Stille
Cary, NC
Brooks Stone
Chapel Hill, NC
Garrett Stovesand
Durham, NC
Brian Strang
Durham, NC
Collin Strickland
Chapel Hill, NC
Tonja Strickland
Brooklyn, NY
John Stuart Jr.
Raleigh, NC
Christina Sullivan
Huntersville, NC
Brian Sullivan
Chapel Hill, NC
Cheryl Sullivan
Zebulon, NC
Jonathan Sundheimer
Carrboro, NC
Jenny Sweet
Greensboro, NC
John Szymankiewicz
Raleigh, NC
Lorna Tai
Raleigh, NC
Adam Tan
Carrboro, NC
Jeremy Tarr
Chapel Hill, NC
Ryan Tarrant
Raleigh, NC
Philip Taylor
Raleigh, NC
DeAnna Taylor
Durham, NC
Holly Taylor
Durham, NC
Ian Taylor
Pawleys Island, SC
Tiffani Taylor Otey
Winston-Salem, NC
Clark Tew
Winston-Salem, NC
William Tew
Thomasville, NC
Thomas Thekkekandam
Durham, NC

Cassandra Thomas
Mitchellville, MD
Tomeka KotRhonda Thomas
Manassas, VA
Manda Thomas
Charlotte, NC
Guinevere Thompson
Greensboro, NC
Elizabeth Thompson
Raleigh, NC
LaShanda Thompson
Fayetteville, NC
Emile Thompson
Winston-Salem, NC
Ryan Thompson
Durham, NC
Kaelyn Thompson
Farmington Hills, MI
Amy Thurston
Raleigh, NC
Caitlin Torney
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Jonathan Trapp
Rocky Mount, NC
Anthony Traurig
Charleston, SC
Eleanor Trefzger
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Michael Trotter
Belmont, NC
Morgan Troyer
Cary, NC
Kelsey Tucker
Raleigh, NC
William Turner Jr.
Burlington, NC
Timothy Tyson
Salem, OR
Taylor Tyson
Chapel Hill, NC
Kristin Uicker
Matthews, NC
Daniel Umlauf
Winston-Salem, NC
Robert Valdillez
Raleigh, NC
Jessica Vance
Durham, NC
Nikeisha Vandecruise
Raleigh, NC
Daniel Vandergriff
Winston-Salem, NC
Elizabeth Varner
New Orleans, LA
Angela Velez
Durham, NC
Dennis Velez Lugo
Youngsville, NC
Nicholas Verna
Morrisville, NC
Kevin Vidunas
Charlotte, NC
Mandana Vidwan
Miami, FL
Michael Vikitsreth
Washington, DC
Nicole Vincent
Chapel Hill, NC
Robert Vocci
Kernersville, NC
Derick Vollrath
Durham, NC
Carolyn Waldrep
Chapel Hill, NC
Emily Walker
Raleigh, NC
Michelle Walker
Carrboro, NC
Andrew Wall
Elizabethtown, NC
Aaron Wallace
Hickory, NC
William Warihay
Greensboro, NC
Francis Warmoth Jr.
Winston-Salem, NC
Jasmine Warren
Charlotte, NC
John Watson IV
Greensboro, NC
Richard Webb
Chapel Hill, NC
Stephen Webb II
Chapel Hill, NC
Marcus Weeks
Durham, NC
Lauren Weinstein
Durham, NC
Michael Wells
Winston-Salem, NC
Alisha Wells
Nashville, NC
James West
Carrboro, NC
Carolyn West
Albuquerque, NM
Megan West
Raleigh, NC
Shannon Wharry
Raleigh, NC
Sharita Whitaker
Durham, NC
Laura White
Raleigh, NC
Brett White
South Royalton, VT
Kelly White
Cary, NC
Robert White
Durham, NC
Rebecca Wilhelm
Brooklyn, NY
Erik Willard
Charlotte, MI
Mallory Williams
Raleigh, NC
Alex Williams
Lenoir, NC
Neubia Williams
Winston-Salem, NC
Rikesia Latrice Williams
Fayetteville, NC
Alton Leroy Williams
Durham, NC
Dale Williams Jr.
Durham, NC
Amy Willis
Pfafftown, NC
Daniel Willis
Durham, NC
Augustus Willis IV
Chapel Hill, NC
Thomas Wilmoth
Kernersville, NC
Monica Wilson
Gainesville, FL
David Wilson
Charlotte, NC
Kimberly Wilson
Raleigh, NC
Claude Wilson III
Winston-Salem, NC
Carl Winekoff
Ada, OH
Carol Wingler
Arlington, VA
Stephen Wohlers
Burlington, NC
William Wooten
Wilson, NC
Anne Wright
Durham, NC
Ephriam Wright III
Raleigh, NC
Timothy Wyatt
Stoneville, NC
Angela Zachary
Snow Camp, NC
Joseph Zaks
Naples, FL
Ryan Zellar
Cary, NC

Disciplinary Department (cont.)

to use information gathered about the consumers' estate-planning needs to market financial products.

Reprimands

John Alexander of Crossnore was reprimanded by the Grievance Committee. Alexander failed to correct trust accounting deficiencies found by State Bar auditor Bruno Demolli. Alexander also neglected his client's traffic case, failed to communicate with his client, failed to participate in the State Bar's fee dispute process, and failed to respond timely to the Grievance Committee.

John Hairston of Raleigh was reprimanded by the Grievance Committee. Hairston neglected his client's case, failed to communicate with his client for more than a year, and failed to supervise an associate lawyer.

Graham lawyer **Jimmy Joyner** was reprimanded by the Grievance Committee. Joyner failed to act diligently, failed to communicate with his clients, and failed to respond to the State Bar.

Clinton O. Light of Eden received two reprimands from the Grievance Committee. Light engaged in the unauthorized practice of law in Virginia, engaged in an *ex parte* communication with a judge, advised his client to disobey a legal obligation to appear in a Virginia court in response to a summons, failed to act with reasonable diligence, failed to provide his client with information necessary to make an informed decision, failed to handle his client's North Carolina domestic case diligently, and failed properly to seek the court's permission to withdraw. In a separate matter, Light failed properly to supervise a non-lawyer assistant, failed to inform his client of the court's final orders, and failed to timely file a motion to withdraw.

John Lewis of Cullowhee was reprimanded by the Grievance Committee for failing to respond to the State Bar.

Marty McConchie of Durham was reprimanded by the Grievance Committee. He neglected his client's case, failed to provide necessary information to his client and the client's new attorney, and failed to respond to the State Bar.

Mary Phillips of Wallace was reprimanded by the Grievance Committee. She failed to handle an estate matter promptly and failed to respond to the State Bar.

Reciprocal Discipline

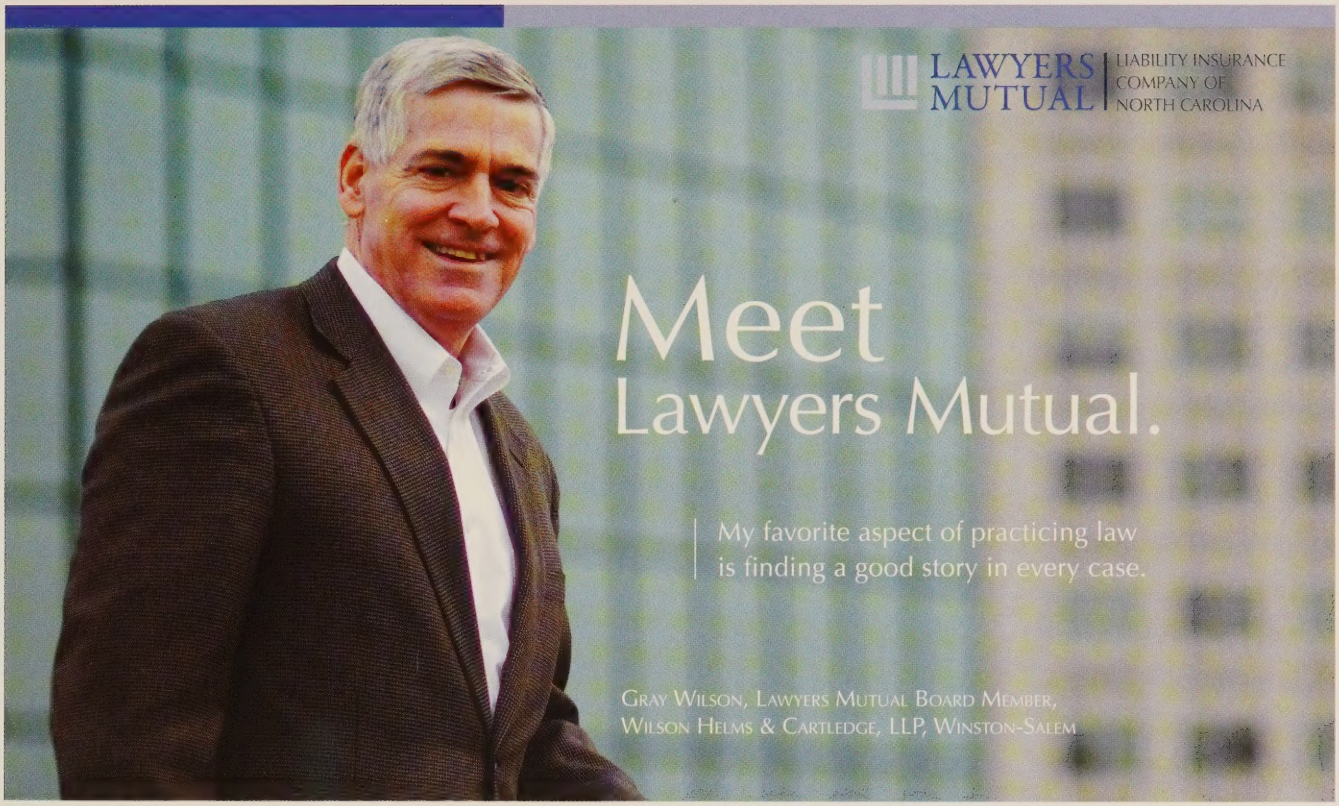
The Grievance Committee imposed reciprocal discipline on **J. Warren Tomlin** of Roanoke, Virginia. Tomlin will be suspended for five days if he is ever reinstated from inactive status.

Disability Inactive Status

The DHC entered consent orders transferring **Karen Zaman** of Chapel Hill and **Bret Tomits** of Charlotte to disability inactive status. The chair of the Grievance Committee transferred **Terrance L. Williams** of Clinton and **Debra K. Gilchrist** of Fayetteville to disability inactive status.

Petitions for Reinstatement

The DHC denied **Michael H. McGee's** petition for reinstatement. McGee was suspended in 2004 for making false statements in his personal bankruptcy. ■



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